Benj. Rand. Ba

TREATISE

OF THE

Lavvs of the Foreſt,

Wherein is declared not only thoſe Laws, as they are now in force, but alſo the Original and beginning of Foreſts; and what a Foreſt is in its own proper nature, and wherein the ſame doth differ from a Chaſe, a Park or a Warren, with all ſuch things as are incident or belonging thereunto, with the ſeveral proper terms of Art.

Alſo a TREATISE of the POURALLEE, declaring what Pourallee is, how the ſame firſt began, what a Pourallee-man may do, how he may hunt and uſe his own Pourallee, how far he may purſue and follow after his Chaſe; together with the Limits and Bounds as well of the Foreſt, as the Pourallee.

Collected, as well out of the Common Laws and Statutes of this Land; As alſo out of ſundry Learned ancient Authors, and out of the Aſſiſes of Pickering *and* Lancaſter

By JOHN MANWOOD.

Whereunto are added the Statutes of the Foreſt; a Treatiſe of the ſeveral Offices of Verderors, Regardors and Foreſtors, and the Courts of Attachments, Swanimote, and Juſtice-ſeat of the Foreſt; and certain principal Caſes, Judgments, and Entries of the Aſſiſes of *Pickering* and *Lancaſter*. Never heretofore Printed for the Publique.

The Third Edition, Corrected and much Enlarged.

LONDON, Printed for the Company of Stationers. 1665.

UMI

An Advertiſement to the Reader.

THe Author of this Work, Maſter *John Manwood* of *Lincolns-Inn*, did firſt Collect as well out of the Statutes and Common-Law of this Realm, as out of ſundry Ancient Preſidents and Records, much Excellent Learning concerning the Foreſt, which he ſtiled, *A Brief Collection of the Lawes of the Foreſt*: Of theſe he imprinted at his own Charge a ſmall number, which he diſperſed amongſt his Learned Friends, to the end he might have their Approbation of his Labours, before he expoſed them to publique view. Being encouraged by their allowance, he recollected out of that frame, as it lay therein diſperſed, the Body of a new Book, digeſted into Twenty ſeveral Chapters, and Intituled, *A Treatiſe and Diſcourſe of the Laws of the Foreſt*; which was imprinted for publique Uſe, *Anno Domini*, 1598. The Authour purpoſed a (a) third Labour of this kind, and therein intended amongſt other things to publiſh the (b) *Aſſiſes and Iters of the Foreſts of Pickering and Lancaſter*, and the (c) *Ordinances and Aſſiſes of Woodſtock*: but herein Death prevented him. Wherefore in ſome ſort to ſupply

(a) Vide hic, fol. 284.
(b) Vide hic, fol. 123.
(c) Vide hic, fol. 184.

what he meant, (that the reſidue of his pains beſtowed in his ſaid firſt Collection, and not ſet forth in his ſaid Recollection, might not lie out of view and forgotten) you have here, compoſed of them both, one intire Tract, conſiſting of his ſaid Twenty Chapters, and that which hath now been added out of the Authour's firſt Work, *viz. Canutus Laws of the Foreſt, and the Statutes of the Foreſt* made ſince them (placed at the entrance of this Treatiſe for the cauſes alledged by the Authour, in *The Preface to the Matter*, affixed to his firſt Collection, and now annexed hereunto, as you may ſee in the next leaf) and *the Five laſt Chapters*, having for ſubject as in the Table in the beginning of this Book is expreſſed.

The Materials of whatſoever is now added, are all the firſt Authours, without alteration, gathered from the remains of his firſt Work, and reduced to that order you ſee; with this care, that there is nothing thereof in ſubſtance omitted, but what was largely before uttered by the Authour in his Second Treatiſe.

The

The Preface to the Matter.

THe antient Laws of this Realm having always had a ſpecial regard unto the continual ſtudy and care that Kings and Princes have in great and mighty Affairs of Matters of Commonweal, for the good of their Subjects, whereby they are oftentimes wearied with the toyl of the ſame; in reſpect thereof, the ſame Laws have given unto them divers Royal Prerogatives of moſt Noble and Princely Pleaſures, to recreate themſelves withal, to put away from them the remembrance of their labourſome toyl. Amongſt which Prerogatives, the Royal Prerogative of the liberty of a Foreſt is not the leaſt: For a Foreſt both is, and hath been always accounted a franchiſe of ſuch Noble and Princely Pleaſure, that it is not incident unto any Subject of this Realm to have the ſame; but only unto the Crown, and Royal Dignity of a Prince. And therefore there have been always certain particular Laws, differing from the common Laws of this Realm, that were only proper unto a Foreſt, belonging to the ſame for the continuance of it.

And it doth ſeem that Foreſts have been of long time, and that they are very very antient things, although peradventure, not in that nature that they are now uſed here in this Realm of England. For it doth appear, that there were Foreſts, yea, even in the very time of King David: For he ſaith in his 50 Pſalm theſe words, O Lord, I need not to offer unto thee burnt Sacrifices of Beaſts; for all the wild Beaſts of the Foreſt are thine, and ſo are the Cattel upon a thouſand Hills: Then Ergo, there were Foreſts of wild Beaſts in his time. And it doth alſo appear by ſundry ancient Hiſtories, as in Concordantia Hiſtoriarum, and others, that Foreſts have been always in this Realm, from the firſt time that the ſame was inhabited. And alſo you may read there, that Gurguntius the ſon of Belyn being a King of this Land, did make certain Foreſts for his delight and pleaſure in Wiltſhire: and ſo have divers other Kings alſo ſince his time

King *David* in his 50 Pſalm, ver. 10.

Concordantia Hiſtoriarum.

Gurguntius.

time in other places meet for that purpoſe. Which Foreſts the Kings and Princes of this Realm have always maintained and preſerved (with divers Priviledges and Laws appertaining to the ſame) for places of pleaſure and delight for their Recreation.

And if it happen that any Offenders did enter into thoſe priviledged places, and that they did any treſpaſs therein, then they were puniſhed with very ſharp Laws and puniſhments according to the Laws that then were in force, which were ſharply executed, and which Laws were then altogether uncertain, and the Offenders were puniſhed at the Kings will and pleaſure, and not by any Law certain: and thoſe Laws and puniſhments were duly executed and continued by the Kings of this Realm, until, That *Canutus* a Dane came to be King of this Land, which was about the year of our Lord 1016. who taking as great delight and felicity in Foreſts as other Noble Princes of this Realm had done before his time; He for the better preſervation and maintaining of thoſe priviledged Places of pleaſure, did eſtabliſh certain Laws and Canons, only concerning Foreſts, which Laws I have here placed firſt of all in this Book; for although that they have been raked up a long time in the Embers of Oblivion, yet they are worthy to be remembred again. *And becauſe that they are the moſt ancienteſt Laws that I can find concerning Foreſts, therefore I have placed them firſt of all before any others, to the end that thoſe that ſhall read this Book, may both ſee and know what Laws there were in the beginning concerning Foreſts, and how they have altered and changed from time to time, and to that end I have here ſet down all the Statutes concerning Foreſts, that have been made ſince the time of the making of the ſaid Laws, becauſe that it may thereby appear the more plainly how any one of them have abrogated another, or any part thereof, by reaſon whereof that which is Law and in force at this Day, may the more eaſier be diſcerned and known.*

Canutus, a Dane, was King here in *England*, An. Dom. 1016.

It appeareth by the Laws of Canutus *the* Dane *King, in his* Canon *the* 30. That before his time, all wild Beaſts and Birds were only the Kings, and that no other Perſon might kill or hurt them. *For the King by his Royal Prerogative, his*

Canutus Canou 30.

right

right and priviledge was ſuch in England, *that all ſuch things that none of his Subjects could challenge any property in, they were then ſaid to be the Kings:* as wild Beaſts, Birds, and ſuch like, in whoſe Lands or Woods ſoever they were found. *Wherefore the ſame King made this Law,* Volo ut omnis liber homo pro libito ſuo habeat veneream ſive viridem in planis ſuis ſuper terras ſuas, ſine Chacea tamen: & devitent omnes meam ubicunq; eam habere voluero; *which is,* That from henceforth, I will (*ſaith the King*) that every Free-man may take his own vert and Veniſon, or hunting that he can get upon his own ground, or in his own fields, being out of my Chaſe: And let all men refrain from my venery in every place where I will have the ſame. *And alſo it appeareth in the Book of St.* Edward *the Confeſſor did confirm the Law in theſe words:* Volo ut omnis homo ſit venatione ſua dignus in nemore, campo. & dominico ſuo, & abſtineat omnis homo à veneriis meis ubicunq; pacem eos habere volo ſuper pœnam vitæ. *And ſo it appeareth, that both the ſaid Kings did grant and make this Law, that after that time it ſhould be lawful for every Subject to enjoy the benefit of his own hunting, that he could any way take in his own Land, or in his own Woods or Fields, ſo that every man ſhould refrain from hunting the Kings wild Beaſts in his own Foreſts and priviledged places for them, upon pain of the loſs of life of ſuch an Offendor. Which Laws* William the Conquerour *did afterwards in his time confirm, as it doth appear in the ſaid Book of the ſaid Laws,* Chap. 27. *And alſo he did continue the ſame all his life time. And after his death,* William Rufus *his Son in like ſort continued thoſe Laws during his life, until he was ſlain in new Foreſt, as he was in hunting. And after the death of the ſaid* William Rufus *without Iſſue of his body, King* Henry *the Firſt, his Brother, ſucceeded him as next Heir unto the Crown of this Realm, and by his Charter did confirm all the ſaid Laws of the Foreſt of Saint* Edward the Confeſſor, *as it doth appear in the Red Book in the Exchequer, called* Liber Rubrus, cap. 1. Legem ſuarum, *and alſo in the ſecond Chapter of the ſaid Book of the Laws of the Foreſt, in theſe words,* Foreſtas vero

The Book of the Laws of St. *Edward* the Confeſſor.

William the Conqueror.

William Rufus.

Henry the Firſt.

Liber Rubrus Cap. 1.

vero Communi aſſenſu omnium Baronum meorum in manu mea ſic retineo, ſicut pater meus eas retinuit. *And then afterwards in the 18th Chapter of the ſaid Book the Pleas of the Foreſt are there ſpecified and rehearſed in theſe words*, Placita quoque Foreſtarum ſatis ſunt incommoditat. Valliat. ſicut de aſſertis, de Ceſſione, de venatione, de combuſtione, &c. *Which Laws of the Foreſt afterwards did more and more increaſe, and ſo did continue during all the life of the ſaid King* Henry *the* King Stephen. *firſt. And after his deceaſe, King* Stephen *by his Charter did confirm all the ſaid Priviledges, Laws and Cuſtoms made and granted by Saint* Edward the Confeſſor, *and alſo by King* Henry the Firſt, *his Unkle, as it appeareth in the Book of the ſaid Laws: All which ſaid Laws and Cuſtoms the ſaid King* Stephen *did continue all his life. And after his deceaſe* King Henry the Second. *King* Henry *the ſecond, ſucceeding him as next King of this Realm, by his general Charter did confirm the ſaid Laws of the Foreſt in moſt things, and principally concerning the beginning of* Charta de Foreſta. *For in the firſt Book of his Laws, made in the 19 Year of his Reign, Chap. 16. he rehearſeth and declareth the Law of the Foreſt, and the very nature of that; and doth farther ſhew there, how that the Laws of the Foreſt do vary and differ from the Common Law of this Realm; as it doth appear in the ſaid Red Book in the Exchequer, in theſe words.* Sanè Foreſtarum Lex, ratio, pœna quoque vel abſolutio delinquentium, ſive pecuniaria fuerit ſive corporalis, ſeorſum ab aliis Regni Judiciis ſecernunt' & ſolius Regis arbitrio, ſeu cujuſlibet familiaris ad hæc ſpecialitèr deputati ſubjicitur; Legibus quidem propriis ſubſiſtit, quæ non Jure communi ſed voluntaria Principum Inſtitutione ſubnixæ eſſe debent, adeo ut per Legem ejus factum fuerit non Juſtum abſolutè, ſed Juſtum ſecundum Legem Foreſtæ dicatur, quia in Foreſtis penetralia Regum ſunt & eorum maximæ deliciæ, ad has quidem venandi cauſa Curis quandoque accedunt, ut modica quiete recreentur. *And afterwards in the twelfth Chapter of the ſame Book, there doth follow another Sentence concern the Laws of the Foreſt, in theſe words*, In ſingulis Comitatibus Foreſta Regis non eſt, ſed in nemoroſis, ubi ferarum latibula ſunt & uberior paſtura; Nec intereſt cujus ſunt nemora,

mora ſive enim Regis, ſive Regni Procerum, liberos tamen & indemnes habeant terræ circuitus diſcurſus. *So that by theſe Texts before rehearſed, it doth appear how the Laws of the Foreſts were taken and uſed in times paſt, and by theſe words*, Nec intereſt cujus ſunt nemora, &c. *It is plainly ſhewed that the King then might, and yet may alſo make a Foreſt in every place where he pleaſeth, as well in the* Lands *and Inheritance of any of his Subjects, as in his own Demeaſne* Lands *and Inheritance, which was a great loſs and hinderance to thoſe that were owners of thoſe* Lands *that were ſo afforeſted. For after the ſame was ſo afforeſted, their profits and paſtures of their* Lands *was devoured by the wild Beaſts of the King without any recompence for the ſame to be made unto them. And this law of afforeſting of the lands and Inheritances of other men did then daily ſo increaſe, that the ſame was thought a very extreme heavy burthen, as well unto Noble-men and Gentlemen, as alſo unto the poor Commonalty of this Realm to bear; for that they might not incloſe their land, nor improve the ſame to their beſt profit, that was ſo afforeſted by the King, but they were forced to ſuffer their ſaid lands ſo afforeſted to lie open and not incloſed: And if any of them did chance to offend againſt the Aſſizes or Laws of the Foreſt, the puniſhment was ſometimes very great for a ſmall offence; and the forfeitures for the ſame, according to the will and pleaſure of the King, and not according to the quantity of the Treſpaſs, nor yet according to the courſe of the Common Law of this Realm. And this Law did continue during the life of King* Henry *the Second. And after his deceaſe, the ſame continued likewiſe during the Reign of King* Richard *the Firſt. And then after his deceaſe, likewiſe during the Reign of King* John. *And every one of the ſaid Kings did daily encreaſe and make more new Foreſts, and more in the* Lands *of their Subjects, to the great hinderance and impoveriſhing of their Subjects.*

Richard the Firſt. King John.

And this miſchief was not at all remedied, until the making of the Charter of the Liberties *of the Foreſt, which was made by King* Henry *the Third: And afterwards the ſame Charter was confirmed and enlarged by King* Edward *the Firſt his Son: which Charter was made for the pacifying of the Commonalty*

Henry the Third. Edward the Firſt.

of this Realm that then were much grieved at this miſchief. And therefore the ſame Charter, called Charta de Foreſta, *even in the very firſt Article of the ſame, did provide a remedy in that behalf in theſe words*, Omnes Foreſtæ, quas Henricus avus noſter afforeſtavit, videantur per bonos & legales homines, & ſi boſcum aliquem alium quam ſuum dominicum afforeſtaverit, ad damnum illius cujus boſcus ille fuerit, ſtatim deafforeſtentur, &c. *By which Branch of the ſaid Charter, you do ſee, that all Foreſts that King* Henry *the Third had made of the Lands of any of his Subjects, which were not the Kings own demeaſn Lands, are here appointed to be diſafforeſted again.*

And again, in the third Article of the ſaid Charter of the Foreſt, there is the very like remedy and proviſion: That all ſuch Foreſts which King *Richard* the Firſt, and alſo King *John* had afforeſted and made of the Lands or Woods of any of his Subjects, being not the demeaſn Lands of the Crown, that then all thoſe Lands and Woods ſhould be diſafforeſted again; For theſe three Kings, *that is to ſay*, King *Richard* the Firſt, King *John*, and King *Henry* the Second, had then newly afforeſted ſo much of the Lands of their Subjects, that the greateſt part of this Realm was then become Foreſt.

And becauſe the miſchiefs, inconveniences, and burthens that were then laid upon the Commonalty of this Realm, were very great and heavy, by the means of the Laws *of the Foreſt, therefore the ſaid Charter of the* Liberties *of the Foreſt hath now moderated the extremeneſs of thoſe* Laws *in a more mild order, as you may perceive by the ſame.*

For he that doth attentively read and examine the whole Charter of the Foreſt, and every Article therein, may thereby partly perceive how hard and ſharp the Laws *of the Foreſt were in times paſt, before the granting of the ſame Charter: And alſo what inconveniences the Inhabitants in Foreſts did then indure and ſuffer, by reaſon of the Foreſt* Laws: *All which are now provided for, and in a meaſurable manner remedied, as you may perceive by the examination of every* Article *of the ſaid Charter. And whereas the ſame Charter did allow or ſuffer any thing that hath ſince that time been thought to be over-heard or ſharp, the*

ſame

ſame hath ſince again been moderated, as you may hereby perceive by theſe Statutes that have been made ſince that time: So gracious and merciful have the Noble Princes of this Realm been towards their loving Subjects: So that now at this day, although that Laws of the Foreſt are of themſelves very mild, gentle and merciful Laws towards the Subjects of this Realm, over that they have been in times paſt: Yet notwithſtanding, we do at this preſent live under the Government of ſo gracious and merciful a Queen, that her Clemency in the execution of thoſe Laws is much more greater than the Favour and Clemency of the Laws themſelves. Whoſe long life, proſperous Reign, and moſt happy Days, GOD of his merciful Goodneſs grant long to continue, to the great comfort of all good Chriſtian Subjects. Amen.

2 Eliz.

This Preface was annexed to the Author's firſt Collection of the Foreſt Laws.

To the Right Honourable

CHARLES Lord HOWARD,

Earl of NOTTINGHAM,

Baron of *Effingham, of the Noble Order of the Garter Knight, One of Her Majesties most Honourable Privy Council, Lieutenant of the Counties of* Sussex *and* Surry, *Constable of the Castle and Forest of* Windsor, *Lord High Admiral of* England, Ireland, *and* Wales, *Lord Chief Justice in* Eire *of all his Majesties Forests, Chases, Parks, and Warrens, by South-Trent.*

RIght Honourable, and my good Lord: Considering the great and provident care, not only of her Majesty; but also that your good Lordship hath for the preservation of the Game in those Forests, Chases, Parks, and Warrens, whereof you have the Charge: And seeing that so many do daily so contemptuously commit such hainous spoils and trespasses therein, that the greatest part of them are spoiled and decayed: And also that very little, or nothing, as yet is extant concerning the Laws of the Forest. I thought it very necessary to Collect this small Treatise, Declaring therein the ways and means how to preserve and maintain Forests, together with the due punishment of such as shall be found Offendors therein, to the intent that thereby men may the better know those Laws, wherein they so often offend, and the danger thereof; which being known,

known, they may the better avoid. And to the end, that this Treatiſe may the rather ſatisfie them, and my ſelf alſo, it hath had the Approbation of the Learned, which have carefully peruſed the ſame: which Treatiſe, (my good Lord) I do here preſent unto your Honour, moſt humbly beſeeching your good Lordſhip to accept of the ſame, as the Fruits and Labour of a well-meaning Mind. And whatſoever is, or ſhall be found wanting through lack of Time, may happily hereafter be ſupplied upon further ſearch and conſideration. And ſo moſt humbly craving your Honourable Acceptance of the ſame, and Patronage of my well-meaning towards your Honourable good Lordſhip, and the Foreſt-Laws; I humbly take my leave, beſeeching God, long to continue your Honour, with all Yours, in health and happineſs.

Your Honour's in all duty,

at Commandment,

JOHN MANWOOD.

To

To the Reader.

I Am not ignorant (Gentle Reader) how dangerous a thing it is, to range in ſo large a field, as I have here undertaken, (which is, to write of the Laws of the Foreſt, being ſo learned a Subject) conſidering how many ſundry Learned Men may be able to controul me, and alſo how many excellent Wits are able far to ſurpaſs me. But ſeeing that the beſt able do ſeem to be ſilent in this ſo neceſſary a matter, give me leave, I pray you, as one that worſt may, to hold the Candle, and to begin the firſt enterprize herein: to the end, that ſome other of greater Judgment and Learning may inlarge and amend that which I have begun: for many will be willinger to amend a thing begun by another, than to begin the ſame themſelves. The Reaſons that moved me to undertake this Buſineſs are theſe: Firſt, the neceſſary uſe and common good that may ariſe and grow to all in general, by the publiſhing of this Treatiſe, in making the Foreſt-Laws more certainly known than they were before; ſeeing that ſo few do know thoſe Laws, and yet ſo many do fall into the danger thereof. Secondly, for that I do ſee by experience, that the Foreſt-Laws are grown clean out of knowledge in moſt places in this Land, partly for want of uſe, and partly by reaſon that there is very little or nothing extant of it in any Treatiſe by it ſelf, but lying ſcattered here and there in the Reports and Terms of the Common Law; and in ſome other ancient Records remaining in ſundry places, not readily to be come by: by reaſon whereof, great injuries and wrongs have enſued to many; and for want of the knowledge of theſe Laws, many fond Opinions of unlearned men, meer Vanities and Conceits, are taken and holden for Law, which are neither Law nor Reaſon: Wherefore, as well to revive in memory theſe Laws

Laws being ſo ancient and learned Prerogative Laws; as alſo to ſatisfie the fond Opinion and blind Conceits that ſuch unlearned men do hold, I held it requiſite to write this Treatiſe, which I hope, even by the Judgment of the Learned, ſhall be thought both needful and very convenient. And in writing of this Treatiſe, leſt by following of mine own Opinion and Conceit, I might thereby the rather err and be deceived; I have ſet down nothing: for the which I have not called to warranty ſome one Author or other, and that not of the unlearned ſort, but even of the beſt and Learnedſt Writers, approving every Argument by ſome lawful Authority, as you may ſee by the marginal Notes therein, and that not by mine own weak Opinion, but by the Judgment of Grave and Learned Men, whoſe good help and adviſe I have had in the peruſing of this Treatiſe; beſides, the approbation and allowance of the ſame by ſome of the moſt Reverend and Learned Judges of the Common Laws.

For the Order and Method of this Treatiſe, I have drawn it into Twenty ſeveral Chapters or Heads; every Chapter containing in it ſelf certain particular Arguments, which are handled in order, according to the Matter and Subject whereof it treateth, as it doth appear *in the generable Table of Chapters in the beginning of this Book.* The whole Scope whereof doth perfectly declare thus much: Firſt, the very true and proper Nature of a Foreſt, with the Original and beginning thereof: Secondly, wherein the ſame doth differ from a Chaſe, a Park, or any other Royal Franchiſe of Pleaſure, with every part and member of the ſame; and whatſoever is or may be belonging to a Foreſt; and alſo how a Foreſt ought to be ordered and governed by the Laws and Officers of a Foreſt, to preſerve the ſame in a continual flouriſhing eſtate; and likewiſe, what abuſes and miſdemeanours do cauſe the decay and ruine of Foreſts. And laſtly, all ſorts of Treſpaſſes, Treſpaſſors, Offendors, and Malefactors in Foreſts, and their ſeveral degrees, puniſhments, and remedies for the ſame. And as I began at my firſt entrance

trance to ſtep into a Foreſt by the Meers and Boundaries of the ſame, ſo having gone through every part of it, viewing and conſidering whatſoever is contained within the circumference thereof, I have made, as it were, a perfect Survey of a Foreſt; and do end within the Pourallee, which although it be altogether without the Limits and Bounds of the Foreſts, yet for the better preſervation of Foreſts, the Laws do in ſome ſort as carefully regard the Pourallees, as if the ſame were Foreſt ſtill; as more at large ſhall appear by reading of the Chapter of the Pourallees.

And thus (gentle Reader) having brought my Work to an end, I leave the ſame to your view, the matter to the Judgment of the Learned, and my ſelf to your Courteſies; deſiring no greater gain or reward at your hands for my Travel herein, than your friendly acceptation of this my poor Labour: Which if I find to be taken in good part, will encourage my going forward in a far greater: But, if otherwiſe, I ſhall not only repent me of my Travel that I have taken in this, but alſo ſmother that, which I have in hand.

Your hearty Well-willer,

JOHN MANWOOD.

The

THE

TABLE

Of the CONTENTS of this BOOK.

Canutus Laws of the Foreſt: And the Statutes concerning the Foreſt, made ſince.

CHAP. I.

1. *THe Definition of a Foreſt.*
2. *Of what things a Foreſt doth chiefly conſiſt.*
3. *An Explanation of the ſaid Definition.*
4. *The difference between a Foreſt and a Chaſe.*
5. *That a Foreſt doth comprehend in it a Chaſe, a Park and a Warren.*

CHAP. II.

1. *Of the Dignity of a King, and his Royal Prerogative to have Foreſts where he will appoint.*
2. *How a Foreſt is made, and what doth make the ſame a Foreſt.*
3. *In what places Foreſts ought to be made.*
4. *Whereof the ſame receiveth the name of a Foreſt.*
5. *The Antiquity of Foreſts.*
6. *What benefit doth grow to the King by the preſervation of Foreſts.*

CHAP. III.

1. *Who may make a Foreſt.*
2. *Who may have a Foreſt.*
3. *How a Foreſt may be granted by the King to a Subject.*
4. *That a Foreſt granted in ſome ſort to a Subject by the King, ſhall be but a Chaſe in the hands of the Subject.*

CHAP. IV.

1. *Which are Beaſts of Foreſts, or Beaſts of Venery.*
2. *Which are Beaſts of Chaſe.*

3. *Which are Beaſts and Fowls of Warren.*
4. *The difference between the Beaſts of the Foreſt, and the Beaſts of Chaſe.*
5. *Of the ſeveral proper Names, Seaſons, Degrees, and Ages.*
6. *Of the apt and meet terms of Hunting, appertaining both to Beaſts of Venery and Chaſe.*
7. *Of the Antiquity of Hunting and Chaſing of wild Beaſts.*
8. *Of the property that the King hath in the Beaſts of the Foreſt.*

CHAP. V.

1. *What is Veniſon.*
2. *Of the general ſignification thereof.*
3. *Of the ſpecial ſignification thereof.*
4. *Whereof the ſame receiveth the name of Veniſon.*

CHAP. VI.

1. *What is Vert in general.*
2. *How many ſorts of Verts there are.*
3. *What is Vert in the Kings own Woods.*
4. *What ſhall be ſaid to be Vert in the Woods of every common perſon.*
5. *Whereof the ſame receiveth the name of Vert.*

CHAP. VII.

1. *Of the Meers and Bounds of the Foreſt.*
2. *That every Foreſt of neceſſity muſt have Meers and Bounds.*
3. *That all the Meers and Bounds of the Foreſt do belong unto the King only.*
4. *The difference between* Infra Regardum Foreſtæ, *and* infra Foreſtam.

CHAP. VIII.

1. *Of Woods and Coverts of the Foreſt, and of their differences.*
2. *That the Laws of the Foreſt do reſtrain every man from cutting down of his Woods within his own Free-hold in the Foreſt.*
3. *How, and in what ſort, men may cut down their Woods within the Foreſt.*
4. *What ſhall be ſaid to be waſte by the Laws of the Foreſt.*
5. *What Forfeiture and Puniſhment doth grow to him that doth commit waſte within the Foreſt.*
6. *Whereof the ſame receiveth the name of waſte.*

CHAP. IX.

1. *Of Aſſarts of the Foreſt.*
2. *What ſhall be ſaid to be Aſſarts, or Lands aſſarted.* 3. *What*

The Table.

3. *What Forfeiture or Puniſhment doth grow to him, that doth commit an aſſart of the Foreſts in his own Wood or Lands.*
4. *What Forfeiture or Puniſhment doth grow to him, that doth make Aſſarts within the Kings demeaſne, Woods or Lands.*
5. *Whereof the ſame receiveth the name of Aſſarts.*

CHAP. X.

1. *Of Purpreſtures of the Foreſt.*
2. *What ſhall be ſaid to be Purpreſtures within the Foreſt.*
3. *How many ſorts of Purpreſtures there are.*
4. *What forfeitures and puniſhment there doth grow to him that doth commit Purpreſtures within the demeaſn Woods or Lands of the King.*
5. *What forfeiture and puniſhment there doth grow to him that doth commit Purpreſture within his own Woods or Lands.*
6. *Whereof the ſame taketh the name Purpreſture.*
7. *What difference there is between* Waſt, Aſſart, *and* Purpreſture.

CHAP. XI.

1. *Of Agiſtment, and what Agiſtment is.*
2. *Of the time of the agiſting of the Kings Woods and Lands.*
3. *who ſhall agiſt the Kings woods and lands.*
4. *Of the time of agiſting of other mens woods and lands.*
5. *Who ſhall agiſt the woods and lands of other men.*
6. *Whereof the ſame taketh the name of Agiſtment.*

CHAP. XII.

1. *Of Pawnage, and what Pawnage is.*
2. *Of the time of taking of pawnage in the Kings woods.*
3. *Who ſhall receive the pawnage of the Kings woods within the Foreſt.*
4. *Of the time of taking of pawnage in the woods of other men.*
5. *Who ſhall receive the pawnage of the woods of other men within the Foreſt.*
6. *Whereof the ſame taketh the name of Pawnage.*
7. *The difference between pawnage and agiſtment.*
8. *Claim to be quit of pawnage, &c. and to have pawnage.*

CHAP. XIII.

1. *Of the Fence Moneth, or Defence Moneth.*
2. *How long the Fence Moneth doth laſt, and when the ſame doth begin and end.*

The Table.

3. *At what time the Fence Moneth had his first beginning.*
4. *To what end, and for what cause, the same was first ordained and appointed.*
5. *How every Officer of the Forest ought to demean himself in the time of the Fence Moneth, for the preservation of the wild Beasts.*
6. *That no man ought to wander up and down in the Forest in the time of the Fence Moneth, without some especial business there.*
7. *Whereof the same taketh the name of the Fence Moneth.*
8. *The Officers of the Forest, &c.*

CHAP. XIV.

1. *Of Common and Commoners within the Forest.*
2. *What Common is, and whereof the same taketh the name of Common.*
3. *How many sorts of Common there are, and in what manner they be used.*
4. *Who ought to have Common within the Forest.*
5. *Who ought not to have Common within the Forest.*
6. *What Beasts are commonable within the Forest, and what Beasts are not.*
7. *Of surcharges of the Forest, and who is a surcharger by the Law.*
8. *How and in what manner a surcharger of the Forest is to be punished by the Laws of the Forest.*

CHAP. XV.

1. *Of the Drifts of the Forest.*
2. *At what time of the year the Forests shall be driven.*
3. *How often in every year the Forest shall be driven.*
4. *For what cause a Forest shall be so driven.*
5. *By whom the Forest shall be driven.*
6. *In What manner the drifts of the Forest shall be made.*
7. *In what places, and Forests, Drifts shall be so made.*
8. *Of what cattle or beasts they are to make their Drifts of.*

CHAP. XVI.

1. *Of keeping of dogs within a Forest.*
2. *Who may keep dogs within a Forest.*
3. *What dogs may be kept within a Forest.*
4. *What dogs may not be kept within a Forest.*
5. *Of hambling or expediting of dogs within a Forest, and to what end.*
6. *What dogs shall be expeditated.*
7. *By whom they are to be expeditated.*

8. *In*

The Table.

8. *In what manner they are to be expeditated.*
9. *In what places dogs are to be expeditated.*
10. *What forfeiture there doth grow to the King for keeping of dogs unexpeditated within a Foreſt.*
11. *Who ſhall be chargeable to pay the ſame forfeitures, and in what manner.*
12. *Whereof the ſame doth take the name of expeditating, or* Hambling.

CHAP. XVII.

1. *Of Nuſance of the Foreſt, and what ſhall be ſaid to be a Nuſance of the Foreſt.*
2. *How many ſorts of Nuſance of the Foreſt there are.*
3. *Who ſhall inquire of Nuſances of the Foreſt.*
4. *How, and in what manner, the Nuſances of the Foreſt are to be remedied.*
5. *How, and in what manner, they that do make Nuſances of the Foreſt ſhall be puniſhed for the ſame.*
6. *Whereof the ſame taketh the name of Nuſance.*
7. *Of the difference between Nuſance at the Common Law, and Nuſance by the Foreſt Law.*

CHAP. XVIII.

1. *Of Hawking and Hunting within the Foreſt.*
2. *Who may hawk and hunt within the Foreſt, and who not.*
3. *Of licenſes to hunt within the Foreſt, and how men mayuſe their Licences in hunting there.*
4. *Who may grant a licence or warrant to hunt within the Foreſt, and who may not.*
5. *Of the difference between a licence of pleaſure, and a licence of profit.*
6. *Of him that hath a right or intereſt to have yearly a fee-Deer within a Foreſt, and what remedy or means he hath by Law to come by the ſame.*
7. *If he that hath a licence or authority to hunt within the Foreſt, do abuſe the ſame in hunting, then he ſhall be a treſpaſſer in all* ab initio.
8. *Of a licence in Law, and a licence in* Fait, *and their difference.*
9. *Of ſuch as are treſpaſſors and malefactors in hunting in Foreſts, and how they are to be puniſhed and uſed for the ſame.*
10. *Of the ſignification of theſe two words,* Hawking *and* Hunting.

CHAP. XIX.

1. *That Treſpaſſers and Offenders in Foreſts ought to be attached by the Miniſters of the Foreſt, they finding them with the manner.*

2. *If*

2. If that ſuch Miniſters of the Foreſt of themſelves be not able to take ſuch treſpaſſers, then they may make Hue and Cry after them, and ſo to cauſe the Country to riſe and take them.
3. If after ſuch Hue and Cry made, ſuch treſpaſſers and offenders do ſtill continue their evil doing, and will not yield themſelves to be taken, then if the Foreſters, or they that do come to aid them, do chance to kill any ſuch offender in arreſting or taking of him within the limits and bounds of the Foreſt, they ſhall not forfeit any goods, or any other thing, nor otherwiſe be arraigned for the ſame.
4. If that any ſuch offenders will not yield themſelves to be taken, but do rather fly out of the Foreſt, to the end that they will not be known nor taken, then in ſome caſes, they are ſtill to be followed, and purſued with Hue and Cry until that they be taken; and in ſome other caſes they are to be purſued with freſh ſuit within the view only.
5. That all the Commanders, Ayders, Receivers, and Aſſiſters of treſpaſſers and malefactors in the Kings Foreſts, are all principal offenders, as well as they that did the offence: for, in treſpaſſes of the Foreſt, there are no acceſſaries, as there are in felonies.
6. How, and in what manner Hue and Cry ſhall be made after an offender of the Foreſt.
7. By whom the ſame ſhall be made.
8. How, and in what manner the ſame ſhall be purſued and followed.
9. In what manner they are to be puniſhed that do refuſe or neglect to follow the Hue and Cry, or to help to take offenders and treſpaſſers of the Foreſt.
10. In what caſes, and for what offences, or treſpaſſes of the foreſt, Huy and Cry is to be made.
11. Whereof called Hue and Cry.

CHAP. XX.

1. What Purlieu, or rather Pourallee is.
2. How the ſame did firſt begin.
3. Whereof it took the name of Purlieu, Pourluy, or Pourallee.
4. That the Purlieu in ſome ſort is foreſt ſtill.
5. That yet nevertheleſs the Purlieu is free for ſome men in ſome ſort to hunt there.
6. Of the difference between the Foreſt and the Purlieu.
7. Of the difference between the Purlieu, and that which is no Purlieu, nor Foreſt, but is abſolutely free.

The Table.

8. *Who may hunt in the Purlieu, and who ſhall be ſaid to be a Purlieu-man.*
9. *In what ſort a Purlieu-man may hunt in the Purlieu.*
10. *When, and how often a Purlieu-man may hunt there.*
11. *How far a Purlieu-man may purſue and follow after his Chaſe.*
12. *When, and in what caſes, a Purlieu-man may purſue and follow his Chaſe into the foreſt, and there take and have the thing ſo chaſed and killed, and when not.*
13. *Of the Ordinances and Laws of the Purlieus, and of their firſt beginning.*
14. *How, where, and in what ſort, the offences and treſpaſſes that are done and committed in Purlieus, ſhall be tried and puniſhed.*
15. *That becauſe that in ſome ſort the Purlieu is Foreſt ſtill, therefore the King hath certain Officers there, that do attend upon the ſame, and have the charge of the Purlieu's, which are called Raungers, being Officers rather to the Foreſt, than in a Foreſt.*
16. *How a Raunger is made, what his oath, authority and office is, and wherein the ſame doth chiefly conſiſt.*
17. *Whereof called Raungers, or Raunger.*

CHAP. XXI.

1. *Of the Courts of the Foreſt in general, and the Officers thereto attendant.*
2. *What a Verderer is, how made, what his Oath, what his Office.*
3. *What a Regarder is, how made, what his Oath, what his Office.*
4. *What a Foreſter is, how made, what his Oath, what his Office; and Bedle of the Foreſt.*

page 401 to page 422)

page 420) to page 433) against Beddingfield page 437)

CHAP. XXII.

1. *When, and how often the Court of Attachments ſhall be holden.*
2. *The duty of the Verderors at this Court, and of what matters the Attachment there ought to be made.*
3. *The Duty of the Foreſters, Keepers, Woodwards, and other Miniſters of the Foreſt at this Court.*
4. *Of Preſentmements in the Court of Attachments.*
5. *How many kinds of Attachments of the Foreſt there be; and of Replevying of perſons attached.*
6. *How men attached that are baylable, ſhall be bayled, and by whom.*

CHAP. XXIII.

1. *Of the Court of Swanimote, and why ſo called.*
2. *That the Verderors are Judges of this Court; not the chief Warden of the Foreſt, nor his Lieutenant.*
3. *How*

The Table.

3. *How often in one year the Swanimote ſhall be holden; and what Officers, Free-holders, and others that owe their attendance there.*
4. *That upon default of appearance, the defaulters may be compelled to appear by Diſtreſs: and how thoſe Diſtreſſes ſhall be taken.*
5. *About what matters the Juriſdiction of the Swanimote is exerciſed.*
6. *Of Indictments or Preſentments in the Swanimote Court, and what Indictments or Preſentments of the Foreſt are Traverſable, and what not: and of Outlary.*
7. *The Charge given in the Swanimote.*

CHAP. XXIV.

1. *That the Laws of the Foreſt differ from the Common Law of the Realms; and of the Dignity and Authority of the Lord Chief Juſtice of the Foreſt.*
2. *Of the Warrant of general Summons of the Lord Chief Juſtice of the Foreſt to the Sheriff, to warn the Seſſions; and of his Warrant of general Summons to the chief Warden of the Foreſt.*
3. *What perſons ought to appear at the Juſtice-Seat before the Lord Juſtice of the Foreſt by general Summons, and what not.*
4. *Of appearance in proper Perſon, by Atturney, by Gardein, by* Prochein amy: *Of Appearance of a Perſon let to Bayl or Mainpriſe: Difference between Bayl and Mainpriſe.*
5. *The manner of holding the high Court of the Lord Chief Juſtice in Eyre of the Foreſt, commonly called the Juſtice-Seat of the Foreſt, and the Charge given there to the Jury.*

CHAP. XXV.

1. *Certain principal Notes of the Aſſiſes, and Iters of the Foreſts of* Pickering *and* Lancaſter.
2. *Judgments and Entries contained in the Aſſiſes of the Foreſts of* Pickering *and* Lancaſter.
3. *Certain Judgments and principal Notes, taken out of the Records of the Foreſt, digeſted into Titles.*

CARTA

Charta de Foresta,

OF

King CANUTUS a Dane, and a King of this Realm, granted at a Parliament holden at *Winchester*, in the year of our Lord 1016. as followeth.

Incipiunt constitutiones CANUTI *Regis de Foresta.*

My Lord *Coke* bids us beware how we give credit to this, *Co. 4. Inst.* 320. and justly it is to be suspected, saith he, *ibid.*

HÆ sunt sanctiones de Foresta, quas ego *Canutus* Rex cum consilio primariorum hominum meorum condo & facio, ut cunctis regni nostri Angliæ Ecclesiis & pax & Justitia fiat, & ut omnis delinquens secundum modum delicti, & delinquentis fortunam patiatur.

1. Sint jam deinceps quatuor ex liberalioribus hominibus qui habent salvas suas debitas consuet. [Quos Angli *Pagened* appell'.] in qualibet regni mei provincia constituti, ad Justitiam distribuendam unà cum pœna merita & materiis Foreſtæ cuncto populo meo, tam Anglis quam Danis per totum regnum meum Angliæ, quos quatuor primarios Foreſtæ appellandos censemus.

Pagened. These four chief men are those that now are called the Verderors. For they are four chief men of the Forest as they were then: and they do execute the same place; and they have the same authority in most things that these chief men had then.

Lespegend. These seem to be these men that now are called the Regarders: for they have the same office and authority that they had. *Ealdermen.*

2. Sint sub quolibet horum, quatuor ex mediocribus hominibus [quos Angli *Lespegend* nuncupant, Dani vero *yong men* vocant] locati, qui curam & onus tum viridis tum veneris suscipiant.

3. In administranda autem Justicia nullatenus volo ut tales se intromittant: mediocresque tales post ferarum curam susceptam, pro liberalibus semper habeantur, quos Dani *Ealdermen* appellant.

Tine man. These are they that now are called Foresters, or Keepers.

4. Sub horum iterum quolibet sunt duo minutorum hominum quos *Tineman* Angli dicunt, hi nocturnam curam & veneris & viridis tum servilia opera subibunt.

Here you may note both their Office, authority, and beginning.

5. Si talis minutus servus fuerit, tam cito quam in Foresta nostra locabitur, liber esto, omnesque hos exsumptibus nostris manutenebimus.

Michni. Here you may see what allowance a Verderor had by the year of the King for his fee.

6. Habeat etiam quilibet primariorum quolibet Anno de nostra warda quam *Michni* Angli appellant, duos equos, unum cum sella, alterum sine sella, unum gladium, quinque lanceas, unum Cuspidem, unum scutum & ducentos solidos argenti.

A Regardors fee by the year.

7. Mediocrium quilibet unum equum, unam lanceam, unum scutum &, 60. solidos argenti.

A Foresters his fee by the year.

8. Minutorum qui ibet, unam lancem, unam arcubalistam & 15. solidos argenti.

9. Sint omnes tam primarii, quam mediocres, & minuri, immunes,

immunes, liberi, & quieti ab omnibus provincialibus ſummonitionibus, & popularibus placitis, quæ *Hundred Laghe* Angli dicunt, & ab omnibus armorum oneribus quod *Warſcot* Angli dicunt, & Forinſecis querelis.

Hundred Lawe.

All the officers of the Foreſt are to be acquited of paying of any tribute or taxe, and of all Summons and foreign pleas.

10. Sint mediocrium & minutorum cauſæ & earum correctiones tam criminalium quam civilium per providam ſapientiam & rationem primariorum iudicatæ & deciſæ: Primariorum vero enormia ſi quæ fuerint [ne ſcelus aliquod remaneat inultum] noſmet in ira noſtra regali puniemus.

All the officers of the Foreſt are to be corrected and puniſhed by the Verderors of the Foreſt.

11. Habeant hi quatuor unam regalem poteſtatem [ſalva nobis noſtra præſentia] quaterque in Anno generales foreſta demonſtrationes & viridis & veneris forisfactiones quas *Muchehunt* dicunt, ubi teneant omnes calumniam de materia aliqua tangente Foreſtam, eantque ad triplex Judicium quod Angli *of Gangfordel* dicunt. Ita autem acquiratur illud triplex Judicium: Accipiat ſecum quinque & ſit ipſe ſextus & ſic jurando acquirat triplex Judicium, aut triplex Juramentum. Sed *Purgatio ignis* nullatenus admittatur niſi ubi nuda veritas nequit aliter inveſtigari.

Muchhunt.

The Verderors have regalem poteſtatem.

Gangfordel.

They may proceed to a threefold Judgment.

Purgatio ignis.

Triplex ordalia.

12. Liberalis autem homo, i. *Pegen*, modo crimen ſuum non ſit inter mariora, habeat fidelem hominem qui poſſit pro eo jurare juramentum, i. *Forathe*: ſi autem non habet, ipſemet juret, nec paradonetur ei aliquod juramentum.

Pegen.

A freeman may have another to ſwear for him.

Forathe.

13. Si Advena vel Peregrinus qui de longinquo venerit ſit calumpniatus de Foreſta, & talis eſt ſua inopia ut non poſſit habere plegium ad primam calumniam, qualem * nullus Anglus judicare poteſt: tunc ſubeat

How a ſtranger ſhall be dealt withall.

captionem Regis, & ibi expectet quouſque vadat ad judicium ferri & aquæ: attamen ſi quis extraneo aut Peregrino de longe venienti * ſibi ipſi nocet ſi aliquod judicium judicaverit.

If a ſtranger being an offendor ſhall be hurt, he that doth hurt him ſhall have his Judgement executed upon him.

14. Quicunque coram primariis hominibus meis Foreſtæ in falſo teſtimonio ſteterit & victus fuerit, non ſit dignus impoſterum ſtare aut portare teſtimonium, quia legalitatem ſuam perdidit, & pro culpa ſolvat Regi decem ſolidos quos *Dani* vocant *Halfe-hang*, *aliàs Half-hang*.

He that doth bear falſe witneſſe before a Verderor, is diſabled to be a witneſs any more, and he ſhall pay to the King ten ſhillings.

15. Si quis vim aliquam primariis foreſtæ meæ intulerit, ſi liberalis ſit amittat libertatem & omnia ſua, ſi villanus abſcindatur dextra.

If any man do offer force to a Verderor, if he be a freeman he ſhall loſe his freedom, and all that he hath. And if he be villein, he ſhall loſe his right hand.

16. Si alteruter iterum peccaverit reus ſit mortis.

If ſuch an offendor do offend ſo again, he ſhall loſe his life.

Pere & pite.

17. Si quis contra autem cum primario pugnaverit in placito emendet ſecundum pretium ſui ipſius, quod Angli *Pere & Pite* dicunt, & ſolvat primario quadraginta ſolidos.

If any man do contend with a Verderor in ſuit, he ſhall forfeit to the King as much as he is worth, and to the Verderor 40 s.

Gethbrech.

18. Si pacem quis fregit ante mediocres Foreſtæ, quod dicunt *Geth-brech*, emendet Regi decem ſolidis.

He that doth break the peace before a Regarder, ſhall pay to the King ten ſhillings.

19. Si quis mediocrium aliquem cũ ira percuſſerit, emendetur prout interfectio feræ regalis mihi emendari ſolet.

If any man do ſtrike a Regarder in his anger, he ſhall forfeit as if he had killed a Royal beaſt.

20. Si

20. Si quis delinquens in Foreſta noſtra capietur, pœnas luet ſecundum modum & genus delicti. He that is taken offending in the Foreſt, ſhall be puniſhed according to his offence.

21. Pœna & fortisfactio non una eademq; erit liberalis [quem Dani *Ealderman* vocant] & illiberalis, Domini & ſervi, noti & ignoti; nec una eademque erit cauſarum tum civilium tum criminalium, ferarum foreſtæ, & ferarum regalium, viridis & veneris tractatio: nam crimen veneris ab antiquo inter majora & non immerito numerabatur: viridis vero (factione chaceæ noſtræ regalis exceptа) ita puſillum & exiguum eſt, quod vix ea reſpicit noſtra conſtitutio: qui in hoc tamen delinquerit, ſit criminis Foreſtæ reus. *Ealderman.* The puniſhment of him that is a freeman, and of him that is not a freeman, The puniſhment of a Maſter, and of a Servant, of a man known, and of a man not known, of criminal cauſes, and civil cauſes. Of beaſts of the Foreſt, and of royal beaſts, ſhall not be all one. Hunting is one of the greateſt offences in the Foreſt. The offence in Vert is but ſmall: But yet it is an offence, for it is a breach of the free chaſe.

22. Si liber aliquis feram foreſtæ ſugerit, ſive caſu, ſive præhabita voluntate, ita ut curſu celeri cogatur fera anhelare, decem ſolidis Regi emendet; ſi illiberalis, dupliciter emendet; ſi ſervus, careat corio. He that doth hunt a wild beaſt, and doth make him pant, ſhall pay ten ſhillings: If he be not a free man, then he ſhall pay double. if he be a bond-man, he ſhall loſe his skin.

23. Si verò harum aliquot interfecerit, ſolvat dupliciter & perſolvat, ſitque præterii ſui reus contra Regem. The puniſhment for killing a Deer.

24. Sed ſi Regalem feram, quam Angli a *Staggon* appellant, alteruter coegerit anhelare, alter per unum Annum, alter per duos careat libertate naturali: ſi vero Servus pro utlegato habeatur, quem Angli *Frendleſman* vo- *Staggon:* The puniſhment for hunting a Staggon. *Frendleſman.*

The punishment of him that doth kill a wild beast which is a royal beast.

25. Si vero occiderit, amittat liber scutum libertatis, si sit illiberalis, careat libertate; si servus, vita.

Bishops, Abbots, and Barons may hunt all beasts of the Forest that are not royall beasts.

26. Episcopi, Abbates, & Barones mei, non calumniabuntur pro venatione, si non regales feras occiderint, & si regales, restabût pro rei regi libito suo, sine certa emendatione.

Bubali olim in Anglia.

27. Sunt aliæ (præter feras forestæ) Bestiæ quæ dum inter septa & sepes Forestæ continentur, emendationi subjacent: quales sunt capreoli, Lepores, & Cuniculi. Sunt & alia quam plurima animalia quæ quanquam infra septa Forestæ vivunt, & oneri & curæ mediocrum subjacent, Forestæ tamen nequaquam censeri possunt, qualia sunt equi, Bubali, Vaccæ, & similia. Vulpes & Lupi, nec Forestæ, nec veneris habentur, & proinde eorum interfectio nulli emendationi subjacent. Si tamen infra limites occidantur, fractio sit regalis chaceæ, & mitius emendetur. Aper vero quanquam Forestæ sit, nullatenus tamen Animal veneris haberi est assuetus.

There be some wilde beasts (besides the wilde beasts that are properly beasts of the Forest) that so long as they are remaining within the bounds of the Forest, the hunting of them is punishable by the Laws of the Forest, such are wilde Goats, Hares, and Connies. And there be divers other beasts which although they do live within the Forest, and they be under the charge of the Regardors, yet they cannot be accounted beasts of the Forest: Such are wilde Horses, Bugalles, Kine, and such like. Foxes and Wolves are not accounted beasts of the Forest, nor of Venery; and therefore the killing of them shall not yield any recompence. Yet notwithstanding, the killing of them within the bounds of the Forest is a breach of the Kings royal free Chase; and therefore the offendor shall for the same yield a recompence.

A wild Boar; although he be a beast of the Forest, yet he is in no wise accounted a beast of Venery.

28. Bosco

28. Boſco nec ſubboſco noſtro ſine licentia primariorum Foreſtæ nemo manum apponat, quod ſi quis fecerit, reus ſit fractionis regalis chaceæ. Vert in the Kings Wood. No man may lay his hands upon the Kings demeſne Woods without licenſe of the Verderor: for if he do, he ſhall be adjudged guilty of the breach of the Kings free chaſe Royal: every tree in the Kings Woods is Vert.

29. Si quis vero ilicem aut arborem aliquam qui victũ feris ſuppeditat ſciderit, præter fractionem Regalis chaceæ, emendet Regi viginti ſolidis. Vert in another mans Wood. If any man do cut down a Holly tree, or any other Tree in the Foreſt which doth bear fruit for food for the wild beaſts, beſides the breach of the free Chaſe Royal, he ſhall pay twenty ſhillings to the King for a recompence.

30. Volo ut omnis liber homo pro libito ſuo habeat venerem ſive viridem in planis ſuis ſuper terras ſuas, ſine chacea tamen: Et devitent omnes meam, ubicunque eam habere voluero. By this Law it doth appear, that before that time all wild beaſts were the Kings, whereſoever they were out of the Foreſt: And therefore the King made this Law, that every man might take his Venery in his own ground, ſo that they did refrain from the Venery of the King in his Foreſt. But ſee the contrary *Co. 4. Inſt. 320.* and if King *Canutus* made any Law about this matter, it was *cap. 77. viz. præterea autem concedo ut in propriis ipſorum privilegiis, quiſq; tum in agris quam in ſilvis excitet agitetque; feras autem meas ne venentur cum pœna præcipio:* And ſaith he, This differs much from the other in two reſpects. 1. That the true Law extends as well to Woods as to Plains, the other only to Plains. 2. By this they may Hunt, by that they cannot.

31. Nullus mediocris habebit nec cuſtodiet Canes quos Angli *Grey-hounds* appellant. Liberali vero, dum genuiſciſſio eorum facta fuerit coram primario Foreſtæ, licebit, aut ſine genuiſciſſione dum remoti ſunt à limitibus Foreſtæ per decem Miliaria: quando vero propius venerint, emendet quolibet Miliare uno ſolido. Si vero infra ſepta foreſtæ reperiatur, dominus canis forisfaciet & canem & decem ſolidos Regi. *Grey hound.* No mean perſon may keep any Grey-hounds: but freemen may keep Grey-hounds, ſo that their knees be cut before the Verderors of the Foreſt, and without cutting of their knees alſo, if they do abide ten miles from the bounds of the Foreſt. But if they do come any nearer to the Foreſt, they ſhall pay twelve pence for every mile: but if the Greyhounds be found within the Foreſt, the Maſter or Owner of the Dog ſhall forfeit the Dog, and ten ſhillings to the King.

Velter langeran. Ramhundt. What Dogs a man may keep in the Foreſt.

32. *Velteres* verò, quos *langeran* appellant, quia manifeſtè conſtat in iis nihil eſſe periculi, cuilibet licebit ſine genuiſciſſione eos cuſtodire. Idem de canibus quos *Ramhundt* vocant.

These little Dogs called Velteres and ſuch as are called Ramhundt (all which Dogs are to ſit in ones lay) may be kept in the Foreſt, becauſe in them there is no danger; and therefore they ſhall not be hoxed or have their knees cut: but although they be lawful Dogs, they muſt be lawfully uſed and kept, as it doth appear by the next Canon.

The price of a mean man. If by misfortune ſuch a kinde of Dogs do become mad and ſavage and do run up and down every where, by the

33. Quòd ſi caſu inauſpicato hujuſmodi canes rabidi fiant, & ubique vagantur negligentiâ dominorum, reddantur illiciti, & emendetur Regi pro illicitis, &c. Quòd ſi intra ſepta Foreſtæ reperiantur, talis exquiratur herus, & emendet ſecundum precium hominis mediocris, quod ſecundum legem Merimorum eſt ducentorum ſolidorum.

negligence of their maſter, and ſo do become unlawful, then the owner muſt yield a recompence to the King for their unlawfulneſs. If they be found within the circuit of the Foreſt, then the maſter of ſuch Dogs muſt be ſought out, and he ſhall yield recompence, according to the eſtimation of a mean man, which according to the antient Law is ten pounds.

The price of a freeman. If a greedy ravening Dog do bite a wild beaſt in the Foreſt, then the

34. Si Canis rabidus momorderit feram, tunc emendet ſecundum pretium hominis liberalis, quod eſt Duodecies ſolidis Centum. Si vero fera regalis morſa fuerit, reus ſit maximi criminis.

owner ſhall yield recompence for the ſame, according to the price of a freeman, which is twelve times a hundred ſhillings. But if he do bite a royal beaſt, then he ſhall be guilty of the greateſt offence.

Theſe are the Conſtitutions of Canutus, concerning the foreſt, very barbarouſly tranſlated out of the Daniſh tongue into Latin, by thoſe that took the ſame in hand. Howbeit, as I find it, ſo I ſet it down, without any alteration of my Copy, in any jote or title.

Note, that in the aforeſaid Canon the eleventh, there is mention made of Purgatio ignis: which manner of trial by Fire, I think is very dark to many, that almoſt have never heard of it, for that it is now long ſince the ſame was in any great uſe in this Land of England: and yet it doth ſeem by divers antient writers, that in times paſt it was a common uſage to try men, whether they were guilty of any offence or not, by the Ordalian Laws, as it doth appear by Holenſhed his Chronicle, in the deſcription of Britain, fol. 98. in (a) ſide Column the firſt, in fine ibidem, where it is written thus, as it followeth.

Vid. Co. li. 9. 32

Holenſhed, in his deſcription of Britain, fol. 98.

The Ordalian Law (with the aforeſaid author) was a certain manner of Purgation uſed two ways: whereof the one was by Fire, the other by Water: In the Execution of that which was done by Fire, the party accuſed ſhould goe a certain number of paces with an hot piece of Iron in his hand, or elſe bare footed upon certain Plough-ſhares red hot according to the manner. This Iron was ſometime of one pound weight, and then was it called Single ordalium: ſometimes of three, and then was it named Trebſe ordalium. And whoſoever did bear or tread on the ſame without hurt of his body, he was adjudged guiltleſſe; otherwiſe if his skin were ſcorched, he was forthwith condemned as guilty of the treſpaſſe whereof he was accuſed.

Vide Grafton pag. 180. That *Emma* the mother of King *Edward* the Confeſſor was accuſed of the death of her ſon, for which ſhe was adjudged by *Robert* Biſhop of *Canterbury* to her trial, by the Ordalian Lawes, and ſo ſhe was led blindfold between two men, to paſſe over 9. Plough-ſhares which were glowing red hot; and (as Chronicles doe report) ſhe did paſſe over them barefooted without hurt, before ſhe thought ſhe had been come to them.

There were in like ſort two kinds of trial by the Water,

Water, that is to say, either hot or cold: and in this trial, the party thought culpable was either tumbled into some Pond or huge vessel of cold water, wherein if he continued for a season without wrestling or strugling for life, he was forthwith acquitted as guiltlesse of the fact whereof he was accused: but if he began to plunge and labour once for breath, immediately upon his falling into that liquor, he was by and by condemned as guilty of the crime. Or else he did thrust his arm up to the shoulder into a Lead, Copper, or Caldron of seething water, from whence, if he withdrew the same without any manner of damage, he was discharged of farther molestation: otherwise he was taken for a trespasser, and punished accordingly. The Fiery manner of purgation belonged only to noble men and women, and such as were free born: but the husbandmen and villains were tried by water. The prayers, ceremonies, holy besture, masses, and all things that were used in the execution thereof, you may see at large in Holenshed his description of Britain, fo. 98, 99, & 100.

Note that these Laws were long before the Conquest, and did continue until the time of K. *John*, and then he did banish them, as *Polidore Virgil*, *Holenshed*, & *Supplimentum Cronicorum* do witnesse.

This kind of trial was for criminal matters; in the Saxon Tongue *Ordæli* signifies as much as *expers criminis*, the defendant being arraigned must plead not guilty, and put himself on God and the Country, which is by Jury, or upon God alone, and this was called *judicium Dei*; and if he was a freeman, then *per ignem*; if of servile condition, then *per aquam*, and that in divers ways. *Vid. Co. 9. Rep. 32. Lambert verbo Ordalium.* This kind of trial was ousted by Act of Parl. *Rot. par. 3. H. 3. membrana. 5.*

This Canutus was King of England in the year of our Lord 1018. and Will. the Conqueror was King of England in the year of our Lord 1067. which is by computation just 49. years before the Conquest, that these lawes were made: which also is now in this year of our Lord 1615. just 597. years since the making of those laws of King Canutus, which is very antient: and yet it doth seem, that Forests themselves are much more antienter then those lawes are. For it doth appear that Forests were long before Christ his time, as the Scripture doth testifie in the second book of Kings, cap. 19. ver. 23: in these words: I will go into the lodgings of his borders, and into the Forest of his Carmel: and as hereafter in his proper place is more fully shewed.

The

The Charter of the Forest, published in the 9. year of King *Hen.* 3.

ALL Forests which King Hen. our Grandfather afforested and made, shall be viewed by good and lawfull men; and if he have made forest of any other wood, more then of his own demesne, whereby the owner of the wood hath hurt, We will that forthwith it be disafforested. And if he have made forest of no mens wood but of his own, then We will that it remain forest still: having the common of herbage, and of other things in the same forest, to them which before were accustomed to have the same. Charta de foresta, cap. 1.

2. Men that dwell out of the forest from henceforth shall not come before the Justicers of our forest by no common Summons, unlesse they be impleaded there, or be sureties for some other that were attached for the forest. Charta de foresta, cap. 2.

3. All woods which have been made forests by King Richard our Uncle, or by K. John our Father, unto our first coronation, shall be forthwith disafforested, unlesse it be our demesne wood. Charta de foresta, cap. 3.

4. All Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, and other our freeholders, which have their woods in forests, shall have their woods as they had them at the time of the first coronation of K. H. our grandfather, so that they shall be quit for evermore of all purprestures, wasts, & asserts, made in those woods after that time, until the beginning of the second year of our Coronation. And those that from henceforth do make purpresture without our special licence, or waste, or assert the same, shall answer unto us for the same wastes, purprestures, and asserts. Charta de foresta, cap. 4.

5. Our Regardors shall go through the Forest to make Rangers. their

their Regard, as it hath been accuſtomed at the time of the firſt coronation of King H. our grandfather, and none otherwiſe. Charta de Foreſta cap. 5.

9. The enquiry or view for lawing of dogs being within our Foreſt, ſhall be made from henceforth, when the Regard is made, that is to ſay, every 3. yeer, & then it ſhall be done by the view & teſtimony of honeſt men, and not otherwiſe. And he whoſe dog is not then found expeditated, ſhall be amerced, and ſhall pay for the ſame 3. s. And from henceforth no Dr ſhall be taken for lawing of dog. And ſuch lawing ſhall be done by the aſſiſe commonly uſed, that is to ſay, that three clawes of the forefoot ſhall be cut off by the skin. But from henceforth ſuch lawing of dogs ſhall not be done, but in places where it hath been accuſtomed from the time of the firſt coronation of the aforeſaid King Henry our grandfather. Charta de Foreſta, cap. 6.

7. No Foreſter or Bedle from henceforth ſhall make Scot-ale, or gather garbe, or oates, or any corn, or lamb, or pig, nor ſhal make no gathering, but by the ſight, and upon the oath of the 12. Regardors when they ſhal make their regard. So many Foreſters ſhall be aſſigned to the keeping of the Foreſts, as reaſonably ſhall ſeem ſufficient for keeping of the ſame. Charta de Foreſt. ca. 7.

8. No Swanimote from henceforth ſhalbe kept within this our realm, but three in the yeer. Firſt, the 15. day afore Michael. when that our giſtakers of our woods come together to take agiſtment in our demeſne woods, and about the feaſt of S. Martin in winter, when that our giſtakers ſhall receive our pawnage. And to theſe two Swanimotes ſhal come our foreſtors, verderors, giſtakers and none other by diſtreſs. The three Swanimotes ſhall be kept in the beginning of 15. days before the feaſt of S. Joh. Baptiſt, when that our giſtakers do meet to ſawn our Deer. And at this Swanimote ſhall meet our Foreſters,

reſters, Verderors and none other by diſtreſs. Moreover, every 40. days through the year, our foreſters and verderors ſhall meet to ſee the attachments of the foreſt, as well for green hugh as for hunting by the preſentment of our foreſters, and afore them attached. And the ſaid Swanimotes ſhall not be kept but within the Counties, in which they have been uſed to be kept. Charta de Foreſta, cap. 8.

9. Every freeman may take agiſtment in his own wood within our foreſt at his pleaſure, and ſhall take his patronage. Alſo we do grant, that every freeman may drive his ſwine freely and without impediment through our demeſne woods, for to agiſt them in their own woods, or elſe where they will. And if their ſwine tarry one night and lie within our foreſt, there ſhall be no occaſion taken thereof whereby he may leeſe any of his own. Charta de foreſta, cap. 9.

10. No man from henceforth ſhall loſe neither life nor member for killing of our Deer, but if any man be taken therwith, and conbict for taking of our Veniſon, he ſhall make a grievous fine, if he have any thing whereof to make fine, & if he have nothing to leeſe he ſhall be impriſond a year & a day, & after the year & a day expired (if he can find ſufficient ſureties) he ſhall be delivered. And if not, he ſhall abjure the Realm. Charta de foreſta, ca. 10.

11. Whatſoever Archbiſhop, Biſhop, Earl or Baron, coming to us at our commandment, paſſeth by our Foreſt, it ſhalbe lawful for him to take & kill one or two of our deer, by the view of the foreſter if he be preſent, or elſe he ſhall cauſe one to blow an horn for him, that he ſeem not to ſteal our Deer. And likewiſe they ſhall do returning home from us, Charta de Foreſta, cap. 11.

12. Every freeman from henceforth without danger, ſhall make in his own wood, or in his land, or in his water, which he hath within our foreſt, mills, ſprings, pools, marle-

marlepits, dikes, or arable ground, without incloſing the arable ground again, ſo that it be not to the annoyance of his neighbours. Charta de Foreſta, cap. 12.

13. Every freeman ſhall have within his own woods, ayries of Hawks, Sparrow-hawks, Faulcons, Eagles, and Herons, and ſhall have alſo the honey that is found in his woods. Charta de Foreſta, cap. 13.

14. No Foreſter from henceforth, which is not a forester in fee, paying to us farm for his Bailiwick, ſhall take any chiminage within his bailiwick. But a foreſter in fee paying us farm for his bailiwick, ſhall take chiminage, that is to ſay, for carriage by cart, the half year 2 d. and for another half year 2 d. for a horſe that beareth loads, for half a year an half-peny, and for another half year a half-peny, and but of thoſe only that come as Merchants through his bailiwick by his licenſe to buy buſhes, timber, bark, coal, and in another place to ſell it again where they will at their pleaſure: But for none other carriage by cart, chiminage or toll ſhall be taken. Nor chiminage ſhall not be taken but in ſuch places only where it hath been uſed to be taken. Thoſe which bear upon their backs, brush, bark or coal to ſell, though it be their living, ſhall pay no chiminage to our foreſters, except they take it within our demeſne woods. Charta de Foreſta, cap. 14.

15. All that be outlawed of treſpaſs within our foreſt ſince the time of King H. our grandfather, unto the firſt year of our coronation, ſhall come to our peace without let, and ſhal find to us ſureties that from henceforth they ſhall not treſpaſs unto us within our foreſt. Charta de foreſta, cap. 15.

15. No Conſtable, Caſtellain, or Bailiff, ſhall hold plea of foreſt, neither for green hugh, nor hunting, but every foreſter in fee ſhall make attachements for plea of the foreſt, as well for green hugh as hunting, and ſhall pre-

preſent them to the verderors of the Provinces. And when they be inrolled, and incloſed under the ſeals of the Verderors, they ſhall be preſented to our chiefe Juſtices of our forest, when they ſhall come thither to hold plea of forest, and before them they ſhall be determined. Charta de foreſta, cap. 16.

Juſtices of the Foreſt ſhall determine thoſe pleas.

Concerning treſpaſſers in Parks and Ponds, it is not yet diſcuſſed, for the Lords demanded the proper impriſonment of ſuch as they ſhould take in their Parks and Ponds, which the King denied: Wherefore it was deferred. Merton, cap. 11. Anno 20. H. 3.

It is provided alſo for treſpaſſers in Parks, & Ponds, that if any be thereof attainted at the ſuit of the party, great and large amends ſhall be awarded according to the treſpaſs, and three years impriſonment, & after ſhall make fine at the Kings pleaſure (if he have whereof) and then ſhall find good ſurety, that after he ſhall not commit like treſpaſs: And if he have not whereof to make fine, after three years impriſonment, he ſhall find like ſurety: and if he cannot finde like ſurety, he ſhall abjure the Realm. And if any guilty thereof be fugitive, and have no land nor tenement ſufficient (whereby he may be juſtified) ſo ſoon as the King ſhall find it by Enqueſt, he ſhall be proclaimed from County to County, and if he come not, he ſhall be outlawed. It is provided alſo and agreed, that if none do ſue within a year and day for the treſpaſs done, the King ſhall have the ſuit. And ſuch as be found guilty thereof by lawful enqueſt, ſhall be puniſhed in like manner in all points, as above is ſaid, and if any ſuch treſpaſſor be attainted, that he hath taken tame beaſts or other thing in his Parks by manner of robbery, in coming, tarrying, or returning, let the common law be executed upon him as upon him that is attainted of open theft and robbery, as well at the ſuit of the King as of the party. Weſt. 1. c. 20. An. 3. E. 1.

Aſſiſa

Aſſiſa & conſuetudines Foreſtæ, publiſhed an. 6. E. 1.

If any Fozeſter ſhall find any man attachable foz bert in the fozeſt, firſt he ſhall attach him by two pledges, if they be to be ſound, if not, he ſhalbe bzought to the next Town where they may be found: And if he be afterward ſound, he ſhall attach him by four pledges: and if the third time, he ſhall be pzeſented befoze the Werderozs, and be put by eight pledges: afterward after the third attachement his body ſhall be attached and retained that he may remember what thing Wert is.

2. It is to be knowen that all trées not bearing fruit, and theſe which bear fruit at any time in the whole year, and an Aſh if it be old ſhall remain in the fozeſt, and in the arable land they be all Wert, becauſe our Lozd the King is in poſſeſſion of them.

3. If any man ſhall be found felling an Oke without the demeſne wood, and within the regard of the fozeſt, without the biew oz delibery of the Fozeſter oz Werderoz, he ſhall be attached by four pledges, and by the biew of the Werderoz the Oke ſhall be pzized, and the names of the pledges ſhall be wzitten in the roll of the Fozeſters and Werderozs.

4. If any man ſhall be found in the Kings demeſnes aſſerting oz doing purpzeſture, his body ſhall be fozthwith retained, but if without the demeſnes within the regard, he ſhall be put by ſix pledges, and if he be afterward found, he ſhall double his pledges, if the third time, he ſhall retain his body.

A man attachable *contra vadios & plegios*, is he that is bound to be of good behaviour toward the Foreſt, and then after that bond, is found offending in Foreſt again, as it appeareth in *Cart. de Foreſta, Artic.* 15.

5. If any man ſhall be found attachable contrary to his ſureties and pledges, he ſhall be diſtrained by his cattels found within the bounds of the fozeſt, but if he habe none, his body ſhall be detained until he habe done that which he ought: and if his abode be without the bounds of the fozeſt, his name and the name of the Town whence he is ſhall be inrolled.

6. But

6. But delibery of houſebote and haybote ſhalbe made as the wood may ſuffer the ſame to remain in the ſtate in which it is, and not at the requeſt of the demandant, neither may he gibe nor ſell any thing of the wood without the Kings warrant.

7. If any Deer be found dead, or wounded, there ſhall be an inquiſition made by four of the next villages to the foreſt, which ſhall be written in the roll, the finder ſhall be put by ſix pledges, and the fleſh ſhall be ſent to a Spittle-houſe, if by teſtimony of the herderors and the Country, there be any nigh: But if there be no ſuch houſe neer, the fleſh ſhall be given to the poor and lame, the head and skin ſhall be given to the poor of the next Town, and the Arrow (if there be any found) ſhall be preſented to the Herderor and inrolled in his roll.

This is meant of thoſe Deer that are not ſweet, nor meet to be eaten of the beſt ſort of the people: for if a principal beaſt be found dead and newly killed: that is not meant by this ſtatute to be given to the Lazar-houſe. And if ſuch Deer be found dead, there is no doubt but the ſame Deer is the Kings, for he was the Kings beaſt being alive, and the killing of him hath not altered the property: and then the ſame being the Kings, his Juſtice of the foreſt may diſpoſe of it at his pleaſure, and that diſpoſition good in Law.

8. If there be any Greyhounds found running to do any hurt, the Forester ſhall retain them, and preſent them in the preſence of the Herderors, and ſend them to the King or chief Juſtice of the Foreſt.

9. If any Baſtibe be found upon any Deer and ſhall be expeditated, he whoſe Baſtibe he is ſhall be quit of the deed, but if he be not expeditated, the owner of ſuch Baſtibe ſhall be guilty, as if he had given it with his own hand, and he ſhall be put by ſix pledges, whoſe names ſhall be written, and alſo what kind of Dog it was.

13. If any man take a Deer in the foreſt without warrant, his body ſhall be arreſted wheresoever he be found within the bounds of the foreſt, and when he is taken, he ſhall not be delibered without ſpecial commandment of the King, or of the chiefe Juſtice of the foreſt.

11. If any ſee any misdoers within the bounds of the

forest, to take or carry away any Deer, he shall do what he may to take them, and if he cannot, he shall leby hue and cry, and if he do not so, he shall remain in the Kings mercy.

12. If any Woodward shall see misdoers within his wardship, or shall see a dead wild beast, he shall shew him to the chief forester or verderor, and if he do not, and the forester of our Lord the King find such a fault in his wood within the precinct of the regard, that wood shall be taken into the Kings hands by the Kings commandment, or of his chief Justice, and the woodward is to be attached by four pledges.

13. If any man shall have a wood nere unto the demesne wood of our Lord ye King, it is lawful for him after that the demesne hedges are agisted, to have in ye time of pawnage, so many swine as the wood may suffer, by the view of the foresters, verderors, regardors, agistors, & other lawful men, and this shall be done of the profit of Swine

14. Know ye that in time of pawnage, when the agistment ought to be made, the foresters, verderors, and agistors, ought to crave the assent of the Justices of our Lord the Kings forest, and seek their good will, and the agistment shall be made as well within the demesne hedges and woods as without, and the agistment shall be made according to their commandment, and tenor of their letters, which letters he shall have before the Justices of the forest in the next circuit. And it is commanded, that hereafter be taken for every hog as much as may be, to the use of our Lord the King for pawnage, that is to say, one peny or 2 d. but of little pigs there shall be no more paid then was before.

15. If any man of another County put, or willingly suffer his cattel to go within the bounds of the forest, the forester may retain the cattel by sureties and safe pledges, which if he cannot do, by the testimony of the

Ver-

Verderors, he shall shew the Sheriff of the County thereof, that he may make distress until he find pledges. If the Sheriff do it not, the Forester shall shew the same to the Justices.

16. No Forrer shall bring with him a great Mastive, to drive away the Deer of our Lord the King, but little dogs to look to things without the covert.

17. Of these which claim to have priviledges, as dogs unlawed and Greyhounds, within the bounds of the Forest, there shall be nothing done unto them without our Lord the King his warrant, or his Justices.

18. A wood remaining in the hands of our Lord the King by one year & one day, it is in the Kings pleasure, except it be recovered by the judgment of the Justices.

19. All the bounds of the forest are wholly the Kings.

20. It is lawful to the Abbot of the Borough of S. Peter, to hunt, and to take Hares, Foxes and Partrons within the bounds of the Forest, and to have unlawed dogs, because he hath sufficient warrant thereunto.

21. When Verderors have take an Enquest, one shall set to his seal, & the other shall keep the roll, and so from time to time until the coming of the Justice: then the first day he & all the ministers shall present the roll, or else they shall be amerced, and mainpernors that day shall be proferred for the forest, or else they shall incur a seisure.

22. A man attached for cutting of boughes, that plea appertaineth to the Swanimote before the Steward. And a man attached for felling an Oak in the demesne of the King, or of any other mans, it belongeth to be tried before the Justice, and if he do it to any man in the night time, he shall be imprisoned.

23. A man attached to the Swanimote for green bugh, and not presented at the Swanimote, at another time the presentment shall not hurt him, but shall be taken as a fault in the forester, for the concealment, and be

that is attached shall go quitt by Assise.

24. If a forester do agree unto an offence in the demesne woods of the King, the King shall take from him his chief office if the keeper be living: and because the Kings wood is wasted, at every Iter of the Justice of the Forest, they shall pay to the King half a Mark.

If any Forester, Parker, or Warrenor, do find any trespassor wandering within his liberty, intending to do damage therein, and that after hue and cry made to him to stand unto the peace, will not yield himself, but doth continue & execute his malice, and disobeying the Kings peace, doth fly or defend himself with force and arms, although such Foresters, Parkers and Warrenors, or any other coming in their company, and aiding such Foresters, Parkers, and Warrenors, in the Kings peace, do kill any offendor or offendors, being so found, either in arresting or taking them, or any of them, they shall not be arraigned upon the same before the King and his Justices, or before any other the King his Bailiffs, or any other within any franchise or without, nor shall lese for so doing either life or limb, or suffer any other punishment, but shall enjoy the Kings peace, as they did before: Notwithstanding, let all such Foresters, Parkers, Warrenors, and all other beware, that by reason of any malice, discord, debate, or other evil will had before time, they do not lie, nor maliciously pretend, against any person passing through their liberties, that they came thither for to trespass or misdo, when of truth they did nothing, nor were not found as trespassors, and so kill them, for if they do and be conbict thereupon, the death of such persons shall be inquired, and execution shall be done in like manner, as is done for other of the Kings subjects standing in his peace, and like as it ought to be done of right, and according to the law and custom of the Realm. Statute of Trespassors in Parks. An. 21. E. 1.

Whereas

Whereas certain people that be put out of the Foreſt ſor the purliew, and by the great men have made requeſt to our Sovereign Lord the King at his Parliament, that they might be acquitted of their charge, and of things that the Foreſters demand of them, as they were wont to be, Our Sovereign Lord the King anſwered: Firſt, that where he had granted purliew, that he was pleaſed that it ſhould ſtand in like maner as it was granted, albeit that the thing were ſued and demanded in an evil point. Nevertheleſs, he willeth and intendeth that all his demeſne lands whereſoever they be, that have bin of ꝑ Crown, being returned by way of eſcheat, or otherwiſe, ſhall have eſtate of frée chaſe and frée warren, and in ſuch manner ſhall be ſaved and kept to his uſe for all maner of eſcheates, & for all manner of things that pleaſeth him. And in right of them that have lands & tenements diſafforeſted for ꝑ ſaid purliew, & ſuch as demand to have common within the bounds of foreſts: The intent & will of our Sovereign Lord the King is, that from henceforth (where purliew is) they may claim to be quit of charge of the foreſts. And whereas the Kings beaſts cannot have their haunt & repair upon the foreſt ground, as they had ſo long as they were within the foreſts, that ſuch folk ſhall not have common, nor other eaſement within the bounds of the woods, nor of the lands, the which remain in foreſt: but if any of them that be diſafforeſted by the purliew, would rather be within the foreſt as they were before, thē to be out of the foreſt as they be now; It pleaſeth the King very well, that they ſhall be received thereunto, ſo that they ſhall remain in their antient eſtate, and ſhall have common and other eaſement as well as they had before. Whereupon our Sovereign Lord the King willeth and commandeth, that his Juſtices of the foreſts on this ſide Trent, and beyond Trent, in like maner ſhall kéep and hold, and cauſe to be kept and holden

straitly the foresaid points within their liberties, in the form above mentioned. An. 33. E. 1. Stat. 5.

Ordinatio Foreſtæ, made Anno 34. E. 1.

1. First we have decreed for our selves and our heirs, that of trespasses hereafter to be done in our Forests of green hugh, and of hunting, the Foresters within whose Bailiwicks such trespasses shall happen to be committed, shall present the same at the next Swanimote, before the Foresters, Verderors, Regardors, Agistors, and other ministers of the same forest, and upon such presentments there before the Foresters, Verderors, and all other ministers aforesaid, by the oath as well of Knights, as of other honest and lawful men of the nerest parts where the trespass (so presented) shall be done, not suspected, by whom the truth of the matter may be fully inquired of, and the truth so inquired of, the presentments shall be solemnly affirmed, and sealed with their seals by the common agreement and assent of all the ministers aforesaid, and if the inditement be made otherwise, it shall be utterly void.

2. And if happen any of the foresaid Foresters, Regardors, or other ministers of the same Forests to die, or by sickness, or by any other means to be hindered, by reason whereof he cannot be present at such Swanimote, immediately the Justice of the Forest or his lieutenant shall put another in his place, so ꝑ the inditement may be made by all, in form aforesaid, & that the officers which are to be placed, be placed, as hitherto it hath been accustomed to be done, saving ꝑ Verderors which shall be appointed by election, & by our writ. And we will ꝑ none of the foresaid ministers hereafter, be put in any assises, Juries or enquests, to be taken without the Forest.

2. And if any surcharge be found of the Foresters, or other, which have to do as ministers of the Forest, such surchargers shall be amerced, and shall be imprisoned according

cording to the discretion of the Justice of the Forest, or his lieutenant. And they also by whom they were placed there shall be punished likewise at our pleasure. And at every Swanimote, it shall be inquired of the surcharge of the Foresters, and other ministers of the Forest, and of their oppressions brought upon our people, and they shall make thereof amends, and be punished as is above expressed. And as concerning those persons, which since the time that the Forest was disafforested, have committed offences in Wert and Venison within the Forest to disafforest the same, and that sentence of Excommunication was published against the same offendors, although the same by our good will should not have proceeded, which sentence the Pope himself afterwards reboked, and which grants and disafforesting for certain causes we do reboke and make void. For we will that those offendors be pardoned: Except those offences which were committed in that part which doth remain Forest still, so that the hedges and ditches that were made in the mean time shall be thrown down, removed, and utterly avoided: saving unto us our rents, which we will have to remain according to the assises of the Forest.

4. The wood which is cut and selled shall be removed, and the wood standing shall remain in the Forest, and if by chance any such wood yet standing be sold, it shall remain in the Forest, and the seller shall satisfie the buyer, according to the quantity of the portion of the wood standing in the Forest, and so of wood sold in the mean time, and even as he shall take of the same buyer.

5. We will also, that the Justice of our Forest, or his lieutenant, in the presence of our Treasurer, and by his assent, have power to take fines and redemptions of them which are indicted of trespasses, committed in the Forest before this time not inquired of in the Justices circuit.

6. We will moreover, that they which have had common of pasture in the forest, before perambulation made, and they which afterwards were denied in the forest, and they which have been letten of the said cōmon by the perambulation aforesaid shall have, their cōmon of pasture from henceforth in the forest, as largely and freely as they were wont to have before ꝑ perambulation aforesaid: saving our rents in form aforesaid, &c. Teste, &c. Westminister 28. day of May, An. 34. E. 1.

That the great Charter of the liberties, and the charter of the forest be observed and kept in every article. And that the old perambulations of the forest, in time of King Ed. grandfather to the King that now is, be from henceforth holden in like form as it was then riden and bounden: And thereupon a charter to be made to every shire, where it was riden and bounden: And in such places where it was not bounden, ꝑ King will that it shal be bounden by good men & lawful, and that a Charter be thereupon made, as is aforesaid. An. 3. E. 3. cap. 1. Stat. 2.

Whereas divers people be disherited, ransomed and undone by the chief keepers of the forest on this side Trent and beyond, and by other ministers, against the form of the Statute of the great Charter of the forest, and against the declaration made by King Ed. son of King H. in form following, that is to say, We will and grant for us and our heirs, that for any trespass done in the forest of Wert and Venison, That the foresters in whose bailiwick such trespass shall be committed, shall present the same trespasses at the next swanimote, before the foresters, verderors, regardors, agistors and other ministers of the same forest: And that such presentment be made before the said foresters, verderors, regardors, agistors and other ministers aforesaid, as well by the oaths of Knights, as by other discreet and lawful men and not suspicious of the parties, joyning nēr where such

ſuch offences ſhall be preſented, and where the truth may beſt and moſt clearly be known. And the truth perfectly known, then ſuch preſentments by the common aſſent and conſent of all the ſaid miniſters, ſhall be ſolemnly written, and with their ſeals enſealed: And if any indictment be in any other manner made, the ſame ſhall be void. And therefore becauſe the chief wardens of the foreſt have not obſerved the ſame hitherto: It is agreed and ordained, that henceforth no man ſhall be taken nor impriſoned for Vert nor Veniſon, unleſs he be taken with the manner, or elſe indicted after the form before ſpecified. And then the chief Warden of the foreſt ſhall let him to mainprize, till the Eire of the foreſt, without any thing taking for his deliverance. And if the ſaid Warden will not ſo do, he ſhall have a writ out of the Chancery, which hath been in old time ordained for ſuch perſons indicted to mainprize, till the Eire. And if ſuch warden, after he hath received the writ, do not incontinently deliver ſuch perſons indicted to mainprize, without taking any thing, then the plaintiff ſhall have a writ out of the Chancery to the Sheriff, to attach the ſaid warden to be before the King at a certain day, to anſwer wherefore he hath not replevied him that is ſo taken. And the Sheriff (the verderors being called to him) ſhall deliver him that is ſo taken by good mainprize, in the preſence of the verderors, and ſhall deliver the names of the mainpernors to the ſame Verderors, to anſwer in the eire of the Juſtices. And if the chief Warden be thereof attainted, the plaintiff ſhall recover his treble damages, and the ſaid Warden to be committed to priſon, and ranſomed at the Kings will. And from henceforth it ſhall be written to them as to the chief Wardens of the foreſt, becauſe they may not be Juſtices, nor to have any Record. An. 1. E. 3. cap. 8. Stat. 1.

Taken with the manner, is commonly ſaid to be in four ſorts, viz, Staple-ſtand, Dog-draw, Back-bear, and Bloudy hand, for Veniſon: and for Vert, in two ſorts, viz, cutting of it, and carrying of it away.

No Foreſter nor Keeper of Foreſt or Chaſe, nor none other

other minister, shall make or gather sustenance, nor none other garbering of victuals nor other thing, by colour of their office, against any mans will within their bailiwick nor without, but that that is due of antient right. An. 25. E. 3. cap. 7. Stat. 5.

No manner of Jury shall be from henceforth compelled by any minister of the forest to travel from place to place out of the places where their charge is given to them against their gree, nor by malice, nor by menace, or other duresse constrained to say their verdict of a trespass done in the Forest, otherwise then their conscience will clearly inform them, but they shall say their verdicts upon their charge, in the places where the charge is given them, as above is said. An. 7. R. 2. cap. 3.

The verdict to be given up where the charge is given them.

That no man be taken nor poisoned by any minister of the forest, without due indictment, or by manobery, or trespassing in the forest, or elsewhere, nor shal not be constrained to make any obligation or ransome to any minister of the forest by any manner, against their gree & the assise of the forest. And if any do against this ordinance in any point, and thereof be attainted, he shall pay to the party damnified their double damages, and fine and ransom to the King for his offence. An. 7. R. 2. cap. 4.

27. Every man that hath any wood within the forest may take house-bote and hay-bote within his said wood, without being attached for the same by any officer of the forest, so that he do it by the view of the Forresters. An. 1. Ed. 3. cap. 2. Statut. 2.

A man may hedge in, or fence his wood, and maintain and keep the same in the Forest by this statute.

If any of the Kings subjects having woods of his own growing in his own ground within any Forest, Chase, or Purliew of the same, within this Realm of England, shall cut or cause to be cut the same wood, or part thereof, by license of the King, or of his heirs, in his Forests, Chases, or Purliews, or without license in the Forests, Chase, or Purliew of any other person, or make any sale

ſale of the ſame wood: it ſhall be lawful to the ſame ſubject, owner of the ſame ground whereupon the wood ſo cut did grow, and to other ſuch perſons to whom ſuch wood ſhall happen to be ſold, immediately after the wood ſo cut, to coppy, and incloſe the ſame ground with ſufficient hedges able to keep out all manner beaſts, and cattle out of the ſame ground, for the preſerving of their young ſpring: and ſaid hedges ſo made, the ſaid ſubjects may keep them continually by the ſpace of ſeven years next after the ſame incloſing, and repair and ſuſtain the ſame as often as it ſhall need within the ſame ſeven years, without ſuing of any other license of the King, or of his heirs, or other perſons, or any of their officers of the ſame Foreſts, Chaſes, and Purlieus. An. 22. E. 4. cap. 7.

Nota per ceſt ſtatute que un auter perſon que le roy poit aver un Foreſt per la common ley. Nota que ceſt ſtatute fuit in le negative del common ley, ergo, la common ley fuit contrary devant cco.

The Statute for the drift of the Foreſts, and what beaſts are not to be ſuffered to common in the waſte ſoil of the Foreſt.

NO commoner or commoners within any foreſt, chaſe, moore, marſh, heath, common or waſte ground, nor any officer or officers of or within any of the ſaid foreſts or chaſes, nor any other perſon or perſons whatſoever he or they be, at any time after the laſt day of March, which ſhall be in the year of our Lord God a thouſand five hundred & three & forty, ſhall have or put to paſture into or upon any ſuch ground, foreſt, chaſe, moore, marſh, heath, common, or waſte ground, any ſtoned-horſe or horſes, being above the age of two year, and not being of the altitude and height of fifteen handfuls, to be meaſured from the loweſt part of the hoofe of the fore-foot, unto the higheſt part of the wither, and every handful to contain four inches of the ſtandard, to paſture feed or be in or upon any of the ſaid foreſts, chaſes, commons, moores,

moores, marſhes, heathes, or waſte grounds within any of the ſhires and territories of Norff. Suff. Cambridge, Buck. Huntington, Eſſex, Kent, Southampſhire, Northwilſhire, Oxford, Bark. Worceſter, Glouceſter, Somerſet, Northwales, Southwales, Bedford, Warwick, Northampton, Yorkeſhire. Cheſhire, Staffordſhire, the County of the City of York, the Town and Liberties of Glouceſter, the County of the Town of Kingſton upon Hull, the County Palatine of Lancaſter, the County of Salop, Leiceſter, Hereford, and Lincoln, or within any of them, nor ſhall put to feed or paſture any ſtoned-horſe or horſes, being above the ſaid age of two years, and not being of the altitude and height of fourteen handfuls to be meaſured, as is abovеſaid, within or upon any like ground or grounds as been above written, lying or being within any other ſhire of this Realm, nor within any of them, upon pain of forfeiture of the ſaid horſe or horſes, which ſhall be found in or upon any ſuch ground, foreſt, chaſe, moore, marſh, heath, common or waſte ground, at any time after the ſaid laſt day of March, which ſhall be in the ſaid year of our Lord God, a thouſand five hundred and three and fourty, contrary to the form of this ſtatute. And it ſhall be lawful to every perſon or perſons that ſhall find any ſuch horſe or horſes contrary to the form of this ſtatute, to ſeiſe the ſame in manner and form following, that is to ſay, the ſaid perſon or perſons ſo finding any horſe or horſes, contrary to this act in any foreſt, chaſe, cõmon, moore, marſh, heath, or waſte ground within the ſaid Shires, or other limits aforeſaid, or in any of them, ſhall firſt go unto the keeper or keepers of the ſame foreſt or chaſe, or to his deputy or deputies, or the conſtable, bailiff, headborough, burſholder, or tithing man of any townſhip next adjoyning unto the ſaid place where the ſaid horſe or horſes ſhall be: And ſhall command, or require him or them, or any of them

It ſhall be lawfull for the finder of ſuch horſes to ſeiſe them.

Keeper or other officers of the Foreſt, to help the finder.

them in the Kings behalfe, to go with him or them to bring every ſuch horſe or horſes, as he or they ſhall think to be there feeding or going, contrary to this eſtatute, to the next pound, and there the ſaid horſe and horſes to be meaſured by any of the ſame officer or officers, in the preſence of three other honeſt men, to be named and appointed by the ſaid officer, and if it be ſo found that the ſame horſe or horſes be contrary to this act, that then it ſhall be lawfull to every ſuch perſon and perſons that ſhall ſo challenge and ſeiſe the ſaid horſe or horſes as before is ſaid, to take and retain the ſame horſe or horſes, and every of them, to his own uſe, as his own proper goods & cattels for ever, without lett, interruption, vexation, ſuit, or trouble of the owner or owners of them, or any of them, or of any other perſon or perſons.

Such Horſes or Mares to be driven to the Pound, and there to be meaſured in the preſence of three honeſt perſons.

It ſhall be lawfull to retain them to his own uſe.

And it is further enacted by the authority abobeſaid, that if any of the ſaid keepers, their deputy or deputies, Bailiffs, Conſtables, Headboroughs, Burſholders, or Tythingmen, or any of the ſaid three other honeſt men, which ſhall be required to be at the meaſuring of the ſaid horſe or horſes, as is aforeſaid, do refuſe to do as is aforeſaid, or elſe do not truely meaſure ſuch horſe and horſes, that then every ſuch bailiff, keeper, deputy or deputies, conſtable, headborough, burſholder, and tythingman, and the ſaid three honeſt perſons to be named, as is aforeſaid, and every of them not doing, or refuſing to do his or their duty in the premiſes, ſhall forfeit and loſe 40 s. for every time ſo refuſing to do, or not doing as is aforeſaid, the one halfe thereof to be to the King, and the other half thereof, to the party that will ſue, &c. in which action none eſſoign, &c.

The ſaid keepers, nor other officers ſhall not refuſe to meaſure them.

Provided alway that this act ſhall not extend to any ſtoned horſe or horſes, that ſhall happen once in any year after the ſaid laſt day of March, to break, eſcape, or go out of any ſeveral paſture or ground, againſt the will

and

and mind of the owner, or possessor of such horse or horses, into any of the said forests, chases, moores, marshes, heaths, commons, or waste grounds, so that the said horse or horses, so breaking, escaping, or going out, do not remain or abide in the said forest, chases, moores, marishes, heaths, commons or waste grounds, or any of them, by the space of four days next after sufficient and open notice and knowledge given at the dwelling house of the owner of the said horse or horses, or after open publication thereof made upon a Sunday, or other festival day in the parish Church where the owner or possessor of such horse doth dwell. And be it, &c. That all forests, chases, commons, moores, marishes, heaths, and waste grounds within this Realm of England and Wales, and the marishes of the same, and every of them, shalbe driven at the feast of S. Michael the archangel next coming, or within 15. days then next after, and so yearly to be driven by the Lords, owners, or possessioners of the said forests, chases, or by the officers of the same, and by the constables, headboroughs, bailiffs, bursholders, and tythingmen, within whose offices, precincts and limits, the commons, moores, marishes, heaths, and waste grounds, being out of the forests and chases, be or lie, upon pain of 40 s. to be forfeited to our Sobereign Lord the King, by every of the said officers, bailiffs, constables, headboroughs, bursholders, and tythingmen, as often and at every time as the said drift shall be omitted or left undone, or not effectually done within 15. days after the said feast of S. Michael the archangel, as is aforesaid. And it shall also be lawful to the said Lords, owners, and possessioners of the said forests and chases, by their officers of the same, and to the constables, bailiffs, headboroughs, bursholders and tithingmen, and every of them within the limits of their offices, to make like drift of the said forests, chases, commons,

The manner and form how the forest shall be driven, that is, yearly at the feast of S. *Michael*

Forf. for not driving of the forest.

The drift of the forest is to be made as

commons, moores, marishes, heaths and waste ground, at any other season and time of the year whensoever and as often as they shall think meet and convenient. often as the officers shall think meet.

And furthermore be it enacted, that if in any of the said Forests there shall be found any Mare, filly sole, or sole, or gleding, that then shall be thought not able, nor like to grow to be able to bear soles of reasonable stature, or not able nor like to grow to be able to do profitable labours by the discretions of the Divers aforesaid, or of the more number of them, then the same Diver or Divers shall cause the same unprofitable beasts every of them to be killed, & the bodies of them to be buried in the ground, or otherwise bestowed, as no noyance thereby shall come or grow to the people there near inhabiting or thither resorting. And it is, &c. that the Justices of peace in every shire, riding, & other place in their quarter sessions to be kept and holden by vertue of the Kings commission of the peace to them directed, and all Stewards of Leets and law-days, in the same Leets and law-days shall have authority by this act to enquire of all defaults, contempts, omissions and offences, contrary to the effects above written, & every of them. And all presentments thereof to be found in any of the said Leets and law-days shall be certified by the Steward, or deputy-steward, or court-holder of the same Leet or law-day in the next general sessions of the peace to be holden in the County where such presentment shall be found or had, or unto the Custos Rotulorum of the same Shire within forty days next after the presentment made: which Justices of peace in their quarter sessions of the peace, shall have power & authority by this act, to hear and determine every such presentment before themselves found, or in any of the said Leets or law-days to be presented and certified, as is aforesaid, as well by examination as otherwise: and if any such Steward, Deputy-steward or Courtholder afore- Unprofitable beasts to be killed.

aforesaid, imbesil, or conceal any such presentment, or do not certifie the same as is afore written, every of them so offending, shall forfeit and lose for every such offence 40 s. the one half of every such forfeiture, and of every other of the forfeitures afore written, to be to the King, and the other half to the person or persons that will sue for the same, before the said Justices of peace in their said quarter sessions by bill or information, which Justices shall have full power and authority by vertue of this act, to hear and determine every such offence, as well by examination as otherwise, as is before mentioned. And be it further enacted by the authority aforesaid, that no person or persons, after the feast of Saint Michael the archangel next coming, shall have or put to pasture any horse, gelding, or mare, infected with scabbe or maunge, in, to, or upon any of the said forests, chases, moores, marshes, heaths, commons, waste grounds, or common fields, upon pain to forfeit for every horse, gelding, or mare so infect, pasturing in any of the said grounds, ten shillings, which offence shall be inquirable and presentable before the steward in every leet, as other common annoyance be. And the forfeiture therefore to be to the Lord of the same leet, where the said offences shall be presented. Provided alway, that this act or any thing therein contained, shall not extend nor be prejudicial to any person or persons, having any stoned horse or horses, under the heights and altitudes above mentioned, for or concerning the having or putting any of the said horses to feeding in or upon any common or other waste grounds, where any mares, or fillies be not used nor suffered to be fed, pastured, or kept. An. 32. H. 8. cap. 13.

Note that by the common law the Justice of the forest is

From henceforth all and every the Justice and Justices of the Kings forests, parks and chases within this Realm, which now be, or hereafter shall be, by their writing

wryting sealed with the seal of their office, shall make, assign, depute and appoint as many deputy or deputies for the exercising of the same office of the Justice or Justices of the forests, as to such Justice or Justices from time to time shall be thought convenient, which deputy and deputies so appointed shall have like power and authority to do and execute all things concerning the Kings forests, parks and chases, and all other things concerning the office and offices of the Justice of the forests, to all intents and purposes, and in as large and ample manner and form, as the same Justice or Justices might, or may lawfully do or execute by the Laws of this Realm, and as though the same Justice or Justices were there personally present in his or their own person or persons. Anno 32.H.8.cap.35.

a Judicial office, and therefore he could not make a deputy to execute the same office before this statute.

But it seemeth that the office of the chief warden of the forest is no Judicial office, because the writ of *Homine replegiando*, is by the Statute of (*Anno* 1. *E.* 3. *cap.* 8. before here) to be directed to him. And further, if his office were a Judicial place, he could not make deputies as he doth to execute the same.

De malefactoribus in parcis forestis & variis.

UT malefactores in forestis, Chaceis, parcis, & Warreni. de cetero plus timeant in eisdem intrare & malefacere quam consueverunt, dominus Rex ad Parliamentum suum post Pascha, Anno regni sui vicesimo primo, ad instantiam magnatum regni sui concessit, & firmiter extunc precepit observari; Quod si quis forestarius, parcarius, aut Warrennar. in balliva sua malefactores aliquos invenirent, in balliva sua vagantes, ad dampnum ibidem faciendum, & qui se forestar. parcar. aut Warrennar. post clamorem & uteſium levatum ad partem Regis ad standum recto reddere noluerint, imo malitiam suam persequendo & continuando, & pacem Regis diffugiendo fugam fecerunt, & vi & armis se defenderent, licet forestarii, parcarii, aut Warrennarii illi seu alii quicunque ad pacem domini Regis existentes, & in comitiva forestariorum, parcar. & Warrennar. illorum venientes, ad tales

malefactores ſic inventos arreſtandum ſeu capiendum aliquem ſeu aliquos hujuſmodi malefactorum interfecerunt, non propter hoc occaſionentur coram domino Rege Juſtic. ſuis quibuſcunq; aut aliis ballivis domini Regis, ſeu aliorum quorumcunque infra libertatem aut extra; nec propter hoc omittant vitam aut membrum, aut etiam pœnam ſubeant, imo firmam pacem domini Regis inde habeant; ſed bene caveat foreſtar. parcar. Warrenner. & alii quicunque, ne occaſione contentionis, diſcordiæ, contumeliæ, aut alicujus malevolentiæ ſeu odii prehabitorum aliquibus per ballivas ſuas tranſeuntibus malitioſe imponant, quod cauſa malefaciend. in ballivis ſuis intrant, cum hoc non fecerint, nec ipſos vagantes ut malefaciant, nec malefacientes invenirent, nec cauſam malefaciendi quærentes, & ſic eos occidant: Quod ſi fecerint, & de hoc fuerint convict. fiat de morte ſic interfectorum prout aliorum ad pacem domini Regis exiſtentium, & prout de jure, & ſecundùm conſuetudinem Regni fuerint faciend. &c. 21. *E.* 1. *Placita Parliament.* 134.

CUme aucune gentz que ſont miis hors de foreſt par la purales, & per le grant noſtre Seigneur le Roy aient requis a ceſt Parlement quil ſoient quietes de la poture, & de les choſes que les foreſters lour demandent ſicome il ſoleint avant faire noſtre ſeigneur le Roy reſpond, puis quil ad grante la purale quil luy pleſt bien que le eſſoit auxi come il l'ad grante ja ſoit ceo que la buſoigne eſtoit ſicome & demande en malvies point mais aut meins entent il & voet que tous ſes demeignes & toutes ſes demeignes terres que le part quil ſoient qui ount eſte de la Corone ancientment, ou quia la Corone ſoint retournes per veie deſchete ou en autre maner, aient eſtat' de franche chaſe & de franche garene. Et en tien maner ſoient tenus & gardes a ſon oeps pur totes maner de boſces & pur tote maner de deduis que luy plera.

Et

Et en droit de ceux qui terres & tenemens ſont deafforeſtes par la dite purale & qui demandent davoir commun in dens les boundes des foreſtes, l'entencion & la volunte noſtre Seigneur le Roy eſt, puis que par la purale il cleyment eſtre quites de potuere & que les beſtes le Roy ne puent avoir lour baunt ne lour repeire ſur le terres eſtoient dedeuz foreſte que cele gents ne deguent avoir commune ne autre aiſement dedeuz les boundes de boyes ne de terres qui demerent en foreſt: mais ſi aucuns de ceux qui ſount de ſufforeſtes par la purale, voillent mieux eſtre dedeuz foreſt come avant furent que de hores ſicome il ſont ores, il pleſt bien au Roy quil ſoient a ceo receux, enſint quil puiſſent demorer en lour eſtat ancien & commune & autre eiſement avoit dedeuz ſes foreſtes auxi come urent avant par quoi noſtre ſeigneur le Roy voet & commande que ſes Juſtices de ſes foreſtes de cea trent & de la trent enſement teignent & gardent & tenir & garder facent fermement les dits points en lour baillies & la fourme avant dite. 33. E. 1. *Placita Parl.* 279.

WHereas by an Act of Parliament made in the firſt year of the Reign of the late King Edward the third, it is ordained, that the old perambulation of the Foreſt in the time of King Edw. the firſt, ſhould be thenceforth holden in like form as it was then ridden & bounded, & in ſuch places where it was not bounded, the King would that it ſhould be bounded by good men & lawful.

And whereas for many ages paſt certain Metes, Meers, Limits, and Bounds of the Foreſts, have been commonly known and obſerved in the ſeveral Counties wherein the ſaid Foreſts lie.

And whereas of late divers preſentments have been made, and ſome Judgments given, whereby the Metes, Meers, Limits, and Bounds of ſome of the ſaid Foreſts have been variouſly extended, or pretended to

extend beyond some of the said Meets, Meers, Limits, and Bounds so commonly known, & formerly observed, to the great grievance and vexation of many persons having Lands adjoyning to the said Meets, Meers, Limits, and Bounds, so commonly known, and formerly observed; And whereas of late time some Endeabours or Pretences have been to set on foot Forests in some parts of this Realm, and the Dominion of Wales, Where in truth none have been nor ought to be, or at least have not been used of long time, for remedy thereof, may it please your most Excellent Majesty, that it be Declared and Enacted by Authority of Parliament.

What shall be the Meets and Bounds of Forests.

And be it Declared and Enacted by the Kings most Excellent Majesty, and the Lords and Commons in this present Parliament assembled, and by the Authority of the same, that from henceforth the Meets, Meers, Limits, and Bounds of all and every the Forests respectively, shall be to all intents and purposes, taken, adjudged, and deemed to extend no further respectively, then the Meets, Meers, Limits, and Bounds, within the severall Counties respectively, wherein the said Forests do lie, were commonly known, reputed, used, or taken to be the Meets, Meers, Limits, and bounds of the said Forests respectively, in the twentieth year of the reign of our late Sovereign Lord King James, and not beyond in any wise, any Perambulation or Perambulations, Presentments, Extents, Surveys, Judgments, Records, Decrees, or other matter or thing whatsoever to the contrary notwithstanding: And that all and every the Presentments since the said twentieth year made, and all and every other Presentment and Presentments, and all and every Judgement and award upon, or by reason or pretext of any such Presentment or Presentments, and all and every Perambulation and Perambulations, Surveys, Extents,

20. Jac.

Presentments, &c. contrary hereunto shall be void.

tents, and other Act and Acts, at any time heretofore had or made, by which the Meets, Meers, Limits, or Bounds of the ſaid Foreſts, or any of them, are, or are pretended to be further extended then as aforeſaid: And alſo all and every preſentment of any perſon or perſons at any Juſtice-ſeat, Swanimote, or Court of Attachments, for, or by reaſon, or by colour of any Act or Acts whatſoever, done or committed in any place without, or beyond the ſaid Meets, Meers, Limits, or Bounds reſpectively, ſo commonly known, reputed, uſed, or taken as aforeſaid, and all and every fine and fines and amercement and amercements, upon, by reaſon, or colour of any ſuch preſentment or preſentments, ſhall from henceforth be adjudged, deemed, and taken to be utterly void, and of no force or effect, any Law, Statute, Record, or pretence whatſoever to the contrary notwithſtanding.

No place where no Juſtice-ſeat, Swainmote, Court of Attachment, &c. hath been within ſixty years, ſhall be accounted foreſt.

And be it further Enacted by the Authority aforeſaid, That no place or places within this Realm of England, or Dominion of Wales, where no ſuch Juſtice-ſeat, Swanimote, or Court of Attachment have been held, or kept, or where no Verderors have been choſen, or regard made within the ſpace of ſixty years next before the firſt year of his Majeſties Reign that now is, ſhall be at any time hereafter judged, deemed or taken, or taken to be Foreſt, or within the Bounds or Meets of the Foreſts: But the ſame ſhall be from henceforth for ever hereafter diſafforeſted and freed, and exempted from the Foreſts Laws, any Juſtice-ſeat, Swanimote, or Court of Attachment held or kept within, or for any ſuch place or places, at any time or times ſince the beginning of his Majeſties ſaid reign, or any preſentment, enquiry, act, or thing heretofore made, or hereafter to be made or done to the contrary notwithſtanding.

For Ascertaining the Meets, &c. Commissions shall be issued.

Provided also, and be it further Enacted by the Authority aforesaid, that for the better putting into certainty all and every the Mears, Mers, Bounds, and Limits of all and every the Forests as aforesaid, The Lord Chancellour, or Lord Keeper of the great Seal of England for the time being, shall by vertue of this Act, upon request of any of the Peers of this Kingdom, or of the Knights and Burgesses of the Parliament, or any of them, grant several Commissions under the great Seal of England, to Commissioners to be nominated respectively by the said Peers, Knights, and Burgesses, or any of them, to enquire of, and finde out by inquests of good and lawful men upon Oath, and by the Oaths of Witnesses to be produced at the said Inquests, and by all other lawful means, all and every the Mears, Mers, Bounds, and Limits of the Forests respectively, which were commonly known to be their Mears, Mers, Bounds, and Limits respectively, in the said twentieth year of the Reign of our late Sovereign Lord King James; And to return the Inquests so taken into the Court of Chancery. And that all and every the Sheriffs, and Bailiffs of, and in every County wherein any such Inquests shall be so to be taken, and all and every the Verderors, Forresters, Rangers, and other Officers of the Forests respectively, where any such Officers be, shall be assistant, and attendent to the execution of the said Commissions, according as by vertue of the said Commissions respectively they shall be commanded; and where no such Officers are, or where such Officers be, if they, or any of them shall refuse or neglect such assistance and attendance as aforesaid, then the said Commissioners shall and may proceed without them in the execution of the said Commissions.

Forests shall not extend beyond the Meers &c. so returned.

And be it further Enacted by the Authority aforesaid,

said, that the Forests whereof the Metes, Mers, Limits and Bounds shall be so returned, and certified by vertue of any the said Commissions as aforesaid, from henceforth shall not extend, nor be extended, nor be deemed, adjudged, or taken to extend any further in any wise then the Mets, Mers, Limits, and Bounds that shall be so returned and certified: and that all the places and territories that shall be without the Mets, Mers, Limits, & Bounds so returned & certified, shall be, & are hereby declared to be from thenceforth free to all intents and purposes, as if the same had never been Forest, or so reputed: Any Act or Acts, matter or thing whatsoever to the contrary thereof notwithstanding.

Grounds disforested shall be excluded.

Provided, and be it further Enacted by the Authority aforesaid, that all and every the Grounds, Territories, or places which have been, or are Disafforested, or mentioned to be Disafforested, in, or by any Letters Patents, Charters, or otherwise, since the said twentieth year of the Reign of our said late Sovereign Lord King James, shall be excluded, and left out of the Mets, Meers, Limits, and Bounds of the Forests, which are to be enquired of, returned, and certified by vertue of the said Commissions, or any of them respectively: And shall be, and hereby are declared, and enacted to be utterly Disafforested, free, and exempt to all intents, and purposes, as if the same had never been at all Forest, or so reputed; Any thing in this present Act contained, or any other Act, matter, or thing whatsoever to the contrary in any wise notwithstanding.

Tenants, Owners, &c. of Lands excluded shall enjoy Common.

Provided nevertheless, and be it Enacted, That the Tenants, Owners, and Occupiers, and every of them, of Lands, and Tenements which shall be excluded and left out of the Mets, and Meers, Limits, or bounds of the Forests to be returned, and certified by vertue of any the said Commissions, shall or may use and enjoy

such Common, and other Profits, and Easements within the Forests, as antiently, or accustomably they have used, and enjoyed: Any thing in this present Act contained, or any Act or Ordinance made in the three and thirtieth year of King Edward the first, or any Custom, or Law of the forest, or any other matter, or thing to the contrary thereof notwithstanding. Stat. 17. Caroli primi, capite 16.

CHAP. I.

1. *The Definition of a Forest.*
2. *Of what things a Forest doth chiefly consist.*
3. *An Explanation of the said Definition.*
4. *The difference between a Forest and a Chase.*
5. *That a Forest doth comprehend in it a Chase, a Parke, and a Warren.*

1. Of the Definition of a Forest.

Marcus Tullius Cicero, cap. 2. The first thing to be done is to distinguish the terms that are of various signification, and then *definitionem rei in sensu quæsito exhibere. Arist. in libris Syxy.*

As the most famous Orator, Marcus Tullius Cicero, in his first Book of Offices saith, Omnis, quæ à ratione suscipitur, de aliqua re, disputatio, debet a definitione proficisci, ut intelligatur quid sit id, de quo disputetur: Every treatise of any matter, that by an orderly course is taken in hand, must begin the processe thereof at a Definition, to the end that it may thereby be perceived, what the thing is, whereof the treatise goeth. And therefore, before that I do begin to treat of matters of Forests, it is necessary to set down, what a Forest is, which I do define in this manner.

The Definition of a Forest.

A Forest is a certain Territory of wooddy grounds and fruitful pastures, privileged for wild beasts and fowls

fowls of Forest, Chase and Warren, to rest and abide in, in the safe protection of the King, for his princely delight and pleasure, which Territory of ground, so priviledged, is meered and bounded with unremovable marks, meers, and boundaries, either known by matter of record, or else by prescription: And also replenished with wild beasts of Venery or Chase, and with great coverts of Vert, for the succour of the said wild beasts, to have their abode in: For the preservation and continuance of which said place, together with the Vert and Venison, there are certain particular Laws, Priviledges and Officers, belonging to the same, meet for that purpose, that are only proper unto a Forest, and not to any other place.

The Saxons called a Forest *Buckholt, i.e. silva ferina, Co. 4 Inst* 319. This is properly a description not a definition.

2. Of what things a Forest doth chiefly consist.

AND therefore a Forest doth chiefly consist of these four things, that is to say, of vert, venison, particular laws and priviledges, and of certain meet officers appointed for that purpose, to the end that the same may the better be preserved and kept for a place of recreation and pastime meet for the royal dignity of a Prince.

A Forest doth consist of eight things, *viz.* of Soil, Covert, Laws, Courts, Judges, Officers, Game, and certain bounds. *Co. 4. Inst.* 289.

3. An Explanation of the aforesaid Definition.

SO that now, having already defined, what a Forest is in his own proper nature, it is easie for any man that will, yea even at the sight and beholding thereof, having due consideration to every generality, particularity, and difference therein, to see, as it were in a glass before his face, what a Forest is and ought to be, and what is not a Forest, and what thing the same doth lack of a perfect Forest indeed.

A Forest and Park as they are liberties, are things incorporeal, *Hob* 39.

For the better understanding whereof, it is to be noted, a Forest is a certain Territory of ground. This word

word (Territory) is most properly a circuit of ground, containing a liberty within it self, wherein divers men having land within it, and yet the Territory it self doth lie open and not inclosed, although perhaps there may be divers inclosures within it: for this word Territory, as I take it, is derived from the Latin word Territorium, which is a Territory, or all the fields and countrey lying within the bounds and liberty of a City, which doth extend far without the walls of the City round about, by certain meers and boundaries, without any other inclosure belonging to the same: And, because a Forest doth likewise lie open and not inclosed, having only but meers and boundaries to know the King and uttermost Skirts of the Forest by, therefore this word Territory, is used as a meet word for that purpose. The French man doth use this word Territory in the same sence, for he doth say le Territoire d'une ville, which is, the territory or whole circuit of land belonging to a Town or City.

And whereas it is said, that a Forest is a certain territory of wooddy grounds and fruitful pastures, Thereby is declared, what manner of Territory of ground a Forest must be, that is to say, a Territory of wooddy ground, stored with great woods of coverts for the secret abode of the wild beasts, and also with fruitful pastures for their continual feed: for, the want of either of these two, doth cause the exile of the wild beasts from the Forest to some other place, for that the nature of the wild beasts of the Forest is, to flie unto thick coverts for places of Secretie to rest in, whereof if there be none within the Forest, then they leave the Forest, and wander up and down until they find coverts elsewhere, which being without the bounds of the Forest, where these wild beasts are so found wandering, then they are hunted and killed, to the utter destruction of the Forest:

rest: and in like manner it is, if the wild beasts have not store of fruitful pastures within the Forest for their feed, then they pine away and starve, or else they are forced to forsake the Forest, and to seek for food without the Forest, where they can find the same, and then there they are likewise hunted and killed, by which it is manifest, that a Forest can not have continuance without wooddy grounds and fruitful pastures: And so consequently it followeth, that to destroy the coverts of the Forest, is to destroy the Forest it self: Also, to convert the pasture grounds, meadows, and feedings into arable land, is likewise to destroy the Forest.

And whereas it is before mentioned, that a Forest is a Territory of wooddy grounds and fruitful pastures, priviledged for wild beasts and fowls, &c. Therein is declared the difference between a Forest, and other places of wooddy grounds and fruitful pastures; for there be divers Lordships, liberties, and precincts, that are full of woods, coverts, and fruitful pastures, yea and perhaps of wild beasts also, and yet the same is no forest, for as much as the place it self is not priviledged for those wild beasts to have a firm peace in, from the hurt of any other person, more then the proper owner of the soil.

And for better understanding of these words, priviledged for wild beasts and fowls: By adding these words, of Forest, Chase, and Warren, is declared, what wild beasts and fowls those are, that is to say, of Forest, Chase, and Warren, and for no other. And therefore a Forest is not a priviledged place, generally for all manner of wild beasts, nor for all manner of fowls, but only for those that are of Forest, Chase and Warren. The wild beasts of the Forest are five and no more, that is to say, the Hart, the Hynde, the Hare, the Boar, and the Wolf. The Beasts of the Chase are also five, The

Buck,

Buck, the Doe, the Fox, the Martron, and the Roe, and no more are accounted beasts of the Chase. The beasts and fowls of Warren are these, The Hare, the Conny, the Pheasant, and the Partridge, and none other are accounted beasts or fowls of Warren. All these have priviledge within the Forest, as hereafter, in another place, more at large shall be shewed and proved.

All Waterfowls, *feræ naturæ* are fowls of Warren, *Co. Litt.* 233.

Then after these words of Forest, Chase, and Warren, the words are, to rest and abide in: whereby is declared and shewed, for what cause the territory of the Forest is priviledged, and that is, for the wild beasts to rest and abide in.

And whereas those words, in the safe protection of the King, be mentioned, thereby is shewed by whom those wild beasts in the forest are protected and priviledged, which is, by the King himself, so that it is thereby to be understood, that the will and pleasure of the King is, that all the wild beasts within the bounds of the forest shall be in safety there: And that the King himself, who is the principal Head and Governour of this Commonweale, who also is the fountain of peace, by whom all his liege people and good subjects are protected to live in peace and safety, even he, I say, of his Royal authority hath priviledged and protected those wild beasts and fowls of Forest, Chase, and Warren, within the territory of the Forest, to have their rest and firm peace therein, without any hurt, disquiet, detriment, or damage, of any other person or persons whatsoever.

And by the words following, that is, For his princely delight and pleasure, is shewed, the finall cause, to what end and purpose, these wild beasts and fowls are so protected and priviledged within the Forest, which is, for the delight and pleasure of the King onely, and his nobles, and for no other end nor purpose, nor for no other person or persons: so that hereby, every man

may

may perceive, that it is not therefore ſufferable for any other perſon, to hunt or hawke after any of thoſe wild beaſts or fowls aforeſaid within the Foreſt, without the licenſe or priviry of the King, or his Juſtice in Eyre of the Foreſt, or other lawful authority thereunto.

And by theſe words, Which territory of ground, *&c.* is meared and bounded with unremoveable marks, meers, and boundaries, is ſhewed, by what means, the Territory or ſoil of the Foreſt is known and diſcerned from other land and ſoil which is not Foreſt. For although that a Foreſt doth lie open, and not incloſed with hedge, ditch, pale, or ſtone-wall, which ſome other Incloſures have, yet in the eye and conſideration of the Law, the ſame hath as ſtrong an incloſure by thoſe marks, meers, and boundaries, which go round about it, as if there were a brick-wall to inviron the ſame, for as much as the force of the Law doth incloſe a Foreſt by thoſe marks, meers, and boundaries, directly in a right line from the one of them to another round about, even as if there went a ſtone-wall in the place to incloſe the ſame.

And whereas it is ſaid further, with unremoveable marks, *&c.* Therein is ſhewed, what marks, meers, and boundaries theſe are, for it is ſaid, they are unremoveable, and that is, ſuch, as neither can, nor yet may be removed: For, firſt, they may not be removed or taken away, becauſe the King hath an intereſt in them, for they are the Incloſure of the Kings Foreſt, or, as it were, the pale that doth incloſe the Foreſt. And therefore they may not be removed, for it is eſtabliſhed as a Law Secundum aſſiſam Foreſtæ, quòd omnes metæ foreſtæ ſunt integræ domino Regi, which is, that all the marks, meers and boundaries of a Foreſt, are wholly the Kings, and therefore they may not be taken away, for as much as the Law doth prohibit the ſame. And

they that do go about to take away any marke, mær, or boundary of the Kings Forest, are punishable for the same by the assises of the Forest. Secondly, those marks, mærs & boundaries cannot be taken away, for that they, for the most part, are unremoveable of themselves, in respect that they are such things as they cannot be stirred or removed, as be rivers, high-ways, hills, & such like, and therefore they are unremovable, & yet sometimes for want of such mærs & boundaries, great træs notably known, and such like things, habe been used for mærs and boundaries of the Forest, but that is very seldom, and for want of other mærs and boundaries that are more permanent.

Docent nos mensores tria esse agrorum genera. 1. Divisum & assignatum, quem limitatum vocat Florentius jurisconsultus, quia manufactos limites pro finibus habet. 2. Assignatum per universitatem. sive mensura comprehensum, puta per centurias & jugera. Et 3 arcifinium, qui inde ait us, docente varrone, quòd fines habet arcendis hostibus, id est, naturales, ut sunt flumina et montes, Grotius, de jure belli & pacis, lib. 2. c. 3. S. 16.

And where these words, with marks, meers and boundaries, are before used, which three words seem to be verba æquipollentia, that is to say, many words of one signification, yet because I find those words often used in some of the old perambulations of the Forest made in anno 29. of Ed. the first, when the new Forests were divided from the old, which new Forests are those that then were thereby disafforested, which we now call Puralies or Purlieus, which perambulations do seem to be made by Commissioners, which were men of great learning and judgement, wherein they do use the very same words, and as I do take it, to the end to signifie the difference of such things as are boundaries of the Forest, the words being these, Secundũ metas, bundas, & meras predictas, wherein they seem to understand this word Mera, a mark, for any thing that hath an ascending frõ the ground upward in height, that they call a mark, as, a Hill, a Church, a Tree, or such like. By this word

By the Stat. of 17. Car. 1. cap. 16. the mears, limits, meers, and bounds of all Forests shall be taken adjudged and deemed to extend no further then they were commonly reputed, known, used, or taken to be &c. in the 20. yeer of K. James, & not beyond in any wise, any perambulations, presentments, extents, surveys, judgments, records, decrees, or other matter, or thing to the contrary notwithstanding.

Bunda

Bunda, a boundary of the Forest, they understand any thing whereupon the Forest is bounded, which is a label, and not higher in view, then the soil of the Forest it self is, as a River, a Highway, and such like. By this word Mera, a meer of the forest, they understand the distance and place between the Forest and the soil of any other man, whereupon any thing doth stand, that is a mark of the Forest, in which mark the King hath no interest in the thing it self; for notwithstanding the former ground, Omnes metæ Foreſtæ ſunt integræ domino Regi, which is, that all the mears and boundaries of the Forest are the Kings; yet as there is no principle or ground so general, that there is not some particularity exempted out of it, even so it is of this principle or rule; for, although the words be general, that all mears and boundaries of the Forest shall be wholly the Kings; yet the same must be understood of such things as are or may be any succour or relieſe to the wild beasts of the forest, and not otherwise. For if a dwelling house, or a mill, or such like, be a meer or a mark of the Forest, yet by this the King shall not have any interest in the same thereby, for as much as such things are ad terrorem ferarum Domini Regis, that is to say, a terror or a fear unto the wild beasts of the forest, rather then any succour, covert, or relief for them; And therefore the King must have no part of them: Wherefore of necessity there must be a distance and place between the forest, and such things, for as much as the King hath no interest in such things, Although the same be a mark or boundary, and then such a distance or place between the Kings forest, and such things, wherein the King shall have no interest, they call a meer of the forest: in some perambulations of forests, they do use no more words, but these two, permitas & bundas, which as I do take it, may very well be understood of all manner of marks,

meers,

meers and boundaries, although some men have taken these differences aforesaid.

And whereas it is beforesaid, either known by matter of Record, or else, by prescription, therein is shewed, by what means the marks, meers and boundaries of forests are to be known, which is by one of these two means, or else by both of them; for, all such forests as were newly enlarged by the afforestation of King Henry the second, King Richard the first, or King John, those forests have their marks, meers and boundaries, known by matter of Record, for there were perambulations of them made in the time of Edward the first, because of the disafforestation of those new afforestations: And so all those forests have their marks, meers and boundaries known at this day by matter of Record: But all such forests as were antient Forests before the time of King Henry the second, whereof there were no such perambulations made since his time, because ꝑ Inhabitants neer about such forests had no cause to cõplain of any such new afforestations, as the others had, Therefore all those forests have their marks, meers and boundaries, known by prescription only, for there is no matter of Record to be found to know the marks, meers and boundaries of those forests by. And therefore it is said, either known by matter of Record, or else, by prescription, for, there is no other way to know them by: Unto this it may be objected and said, that the King cannot make a forest but by matter of Record: which I confesse to be true, but yet the King may have a forest by matter of Record, and yet the marks, meers and boundaries thereof, are not now to be known by matter of Record, but only by prescription; for although, when such antient forestes were first made, the markes, meers and boundaries thereof were then known by matter of Record: Yet it is now so long ago

since

ſince the making of them, firſt, that by reaſon thereof, and the troubleſome times that have been ſince, there is now no matter of Record to be found to know thoſe marks, meers, and boundaries by. The Newest foreſt that is in England at this day, is the New foreſt in Hampſhire, for there is no foreſt that doth now remain a foreſt, that was made ſince the making of the New foreſt in Hampſhire, (the foreſt of Hampton-Court onely excepted) and therefore the ſame is called New Foreſt, and yet the ſame was made a foreſt in William the Conquerers time: But there is no other foreſt in England, whereof the beginning or making can be ſhewed, neither by the Chronicles, Hiſtories, nor Record, ſo antient are all the other foreſts of this land: And as antient are the foreſt Lawes, ſaving ſome few of them, that are altered and made more favorable then they were, by Charta de Foreſta, and other later Statutes, that have been made ſince Charta de Foreſta.

And whereas it is further ſaid, namely, And alſo repleniſhed with wild beaſts of venery or chaſe, therein is ſhewed, that of neceſſity, a foreſt muſt alwayes have beaſts of venery, or beaſts of chaſe, abiding in it, for otherwiſe the ſame is no foreſt: for if there be neither beaſt of foreſt, nor beaſt of chaſe in the ſame, then men may fell their woods that they have within the foreſt, and deſtroy their Coverts, for that there are no wild beaſts remaining in it to have covert there: And in like manner may convert their paſtures and meadows that they have within the foreſt, into arable land to their beſt commodity. But if there be wild beaſts, either of venery or chaſe, remaining in any one part of the foreſt, although there be none in ſome other part of the ſame, yet then the ſame remaineth a foreſt ſtill, And then they that have woods within the foreſt, although

they be in those parts of the forest, whereas there are no wild beasts to have coberts, yet they may not fell them, nor destroy them, nor otherwise convert their meadows nor pastures into arable land, without license so to do, forasmuch as the wild beasts must have coberts and feedings in every part of the forest, to have recourse unto, if they fortune to be chased from their wonted layer: But if there be neither wild beast of benery nor chase remaining within the territory or circuit of the forest, then the same is a forest no longer, for now it remaineth but a Territory of ground or woody soil, as it was at the first, and no forest. And therefore of necessity, a forest must be replenished with wild beasts of benery or chase.

And by these words, great Coverts of Vert, for the succour of the wild beasts to have their abode in, &c. is shewed the necessity of the preservation of the Coberts of the forest, forasmuch as the destruction of the coberts doth banish the wild beasts from the forest, and the exile of the wild beasts from the forest doth make the same no forest at all in the end: And therefore, ꝑ more forceable to shew the same, there is used this word (replenished) coming of the verb Repleo, which is to fill up again with new supply, so that still as ꝑ Coberts of the forest be felled or cut down, ꝑ forest must be replenished with coberts: Wherefore men may not sell or cut down their own woods, that are coberts, being within the forest, without license of the Lord Chiefe Justice in the Eyre of the forest. And a license from him to cut down their woods, which are coberts within the forest, is not to be granted, unlesse there be sufficient coberts for ꝑ wild beasts besides left, remaining unfelled. And those woods of cobert, that are felled by license, yet the spryngs thereof must be carefully preserved, that they may grow to be coberts again in short time: for although they have license to sell

their

their woods, yet they had not licenſe to deſtroy them.

And where before it is added, with great Coverts of vert, therein is ſhewed what coverts thoſe muſt be, viz. coverts of vert, which wood (vert) doth comprehend every thing that doth grow and bear green leafe within the foreſt, that may cover and hide a Deer in it.

And where it is further added, for the preſervation and continuance of which ſaid place, together with the Vert and Veniſon, there are certain particular Lawes, priviledges and Officers belonging to the ſame, &c. In thoſe words is declared and ſhewed, wherein a foreſt doth differ from all other places, that is to ſay, in particular lawes and officers: And alſo the whole ſcope and force of thoſe particular Lawes, which do conſiſt in theſe three things, that is to ſay: The preſervation and continuance of the place, which is of the foreſt: Of the Vert, which is the green woods that are coverts: Of the Veniſon, which is every beaſt of foreſt and Chaſe, by a general word uſed for them all. And there can be no treſpaſſe committed by any offendour in the foreſt, but the ſame muſt be in one of theſe three points, that is to ſay, a hurt to the foreſt, to the Vert, or to the Veniſon.

And the Lawes of the foreſt are called particular Lawes, for that, although they be general to all foreſtes alike, yet they are particular Lawes, in that they are proper to foreſtes, and not to any other places.

And where it is ſaid, there are certain Officers belonging to the ſame, therein is ſhewed the jurisdiction of the foreſt, foraſmuch as all offences and treſpaſſes of the foreſt muſt be tried before the Officers of the foreſt.

The Officers that a foreſt muſt of neceſſity have, are theſe, viz. A Steward, Verdorers, Foreſters, Regardors,

Agisters, and Woodwards, which Officers are they that do hold the Courts of the Forest, for the due execution of the Forest Laws: As hereafter more at large shall be shewed.

4. The difference between a Forest, and a Chase.

IN these three things a Forest doth differ from a Chase, that is to say, in particular Laws, in particular Officers, and in certain Courts, that are incident unto a Forest, for the execution of those Laws: for a Chase hath no particular Laws, that are proper to a Chase only, for all offendors in a Chase are to be punished by the common Law, and not by the forest law, nor by any other law that is proper to a Chase. A Chase hath no such officers as a forest hath, for a Chase hath neither Verderors, Forresters, Regardors, nor Agisters, but only Keepers and Woodwards. A Chase hath no Court of Attachments, Swanimote, nor Justice Seat, as a forest hath. And note, that these Officers which are called Keepers in a Chase, are called Forresters in a Forest.

Chases that never were any Forests cannot have any purlieu, and consequently the case in *Dyer*, 326, 327. is mistaken *Co. 4. Inst.* 303.

5. That a Forest doth comprehend in it a Chase, a Park, and a Warren.

AS a forest in his own proper nature is the most highest franchise of noble, and princely pleasure, that can be incident unto the Crown and Royal dignity of a Prince, so the next in degree unto it is a Liberty of a franke Chase. A Chase in one degree is the self same thing that a Park is, and there is no diversity between them, save only that a Park is inclosed, and a Chase is always open and not inclosed, and therefore the next in degree unto a frank Chase is a Park.

The

The last and next in degree unto a Park is the liberty and franchise of a free Warren; And therefore because a Forest in dignity is both the highest and the greatest franchise, being also a general and compound Wood, the same doth comprehend in it, a Chase, a Park, and a free Warren: And for that cause, the beasts of Chase, and the beasts and fowls of a Warren, are priviledged within a Forest, as well as the beasts of the Forest are: for every Forest is a Chase, a Park, and a Warren, for the same doth comprehend every one of them in it, even as every general doth comprehend the speciall: for every Forest is a Chase, but a Chase is not a Forest, but a part of it. And in like sort of a Park and a Warren: And by that reason, the killing, hurting, or hunting, of any of these beasts or fowls, of Chase, Park, or Warren, within the territory of the Forest, is a trespasse of the Forest, and to be punished by the Laws of the Forest only, and not by any other Law.

CHAP. II.

1. *Of the dignity of a King, and his Royal Prerogative to have Foreſts where he will appoint.*
2. *How a Foreſt is made, and what doth make the ſame a Foreſt.*
3. *In what places Foreſts ought to be made.*
4. *Whereof the ſame receiveth the name of a Foreſt.*
5. *The Antiquity of Foreſts.*
6. *What benefit doth grow to the King by the preſervation of Foreſts.*

1. Of the dignity of the King, and his Royal Prerogative, to have Foreſts where he will appoint.

Bracton Lib. primo cap. 8. fol. 5.

THe King or Soveraign Governor of a Realm, is the moſt excellent and worthieſt part or member of the body of the Commonweale next unto God: as Bracton ſaith, Ipſe autem Rex non debet eſſe ſub homine, ſed ſub Deo & Lege, quia lex facit Regem: The King ought not to be under man, but under God and the Law, becauſe the law doth make him a King. And as he is the head and moſt excellent part of the body of the Commonweale, ſo is he alſo through his gouernance, the preſerver, nouriſher, and defendor of all the people being the reſt of the ſame body: And by his great trabels, ſtudy, and labours, they enjoy not only their lives, lands, and goods, but all that ever they have beſides, in reſt, peace, and quietneſſe: As Seneca, de Conſolatione ad Polybium, ſaith, Omnium domos, illius vigilia defendit: omnium otium, illius labor: omnium delicias, illius induſtria: omnium vacationem, illius occupatio: The King by his watch and diligent care doth defend and keep every mans houſe in ſafety: his

Seneca de Conſolatione ad Polybium.

his labour doth maintain and defend every mans rest and quiet: his diligence doth preserve and defend every private mans pleasure and delight; his businesse doth maintain and defend every mans leasure. So that, even as the head of a natural body doth continually watch, and with a prouident care stil look about for the safety and preservation of every member of the same body: Even so the King, being the head of the body of the Commonweale, doth not onely continually carry a watchful eye for the preservation of peace and quietnes at home amongst his own Subjects, but also to preserve and kep them in peace and quietnesse from any forrain inuasion: for which cause the Laws do attribute unto him all honour, dignity, prerogative, and pre-eminence: which prerogative doth not only extend to his own person, but also to all other his possessions, goods, and chattels beside: And therefore in respect of his continual care and labour, for the preservation of the whole Realm, being the residue of the body, The Laws do allow unto the King, amongst many other priviledges, this prerogative, to have his places of recreation and pastime, wheresoever he will appoint: for, it is at the liberty and pleasure of the King, to reserve the wild beasts and the game to himself for his onely delight and pleasure, in such priviledged places where he will have a firm peace appointed for them: for the King may by the Law make a forest even at his will and pleasure for them to rest and abide in; Even as by the Law he may enter into the ground of any of his Subjects, wheresoever there are any Mines of gold or silver to be found, and dig the land at his pleasure for the same Mines, and carry them away, for that they are things that do belong unto the King only, in whose freehold or land soever they chance to be found: for gold and silver are things of the most excellency, that are upon the earth: and therefore, when

Vid. Comm. Co. 4. Inst. 304. 301.

Mr. 9. & 10. Eli. Comm. fol. 318. b.

Vid. Stat. 17. Car. primi, cap. 16.

they are found in the land of any man, the Law doth attribute them, being things of such excellency, to belong to the most excellent person, which is the King. And in like manner wild beasts of venery, and beasts and fowls of chase and warren, being things of great excellency, they are meet for the dignity of a Prince for his pastime and delight: and therefore they do most properly belong unto the King only. And for that cause, it is not lawful for any man within this land to make any Chase, Park, or Warren, in his own freehold, or elsewhere, to keep or preserve any wild beasts or birds of Forest, Chase, Park, or Warren, in it, without the Kings grant or warrant so to do. And if any man do, he is to be punished in a Quo warranto, and the franchise to be seised into the Kings hands, for such wild beasts do belong unto the King, as Bracton saith in his second Book, Habet enim Rex præ cæteris omnibus in Regno suo, de jure gentium, privilegia quæ de jure naturali esse deberent inventoris, sicut Thesaurum, Wreccũ maris, crassum piscem, Sturgionem, Wayviũ, quæ in nullius bonis esse dicuntur: Habet etiam de jure gentium in manu sua, quæ de jure naturali deberent esse communia, sicut feras bestias, & aves non domesticas, quæ deberent esse communia de jure naturali, & per apprehensionem & captionem & aucupationem propria, which in English is thus: And also, saith Bracton, The King hath certain proper priviledges by the common Law of this Realm above all other men within his Kingdom, that he only shall have these things, which by the law of nature ought to be the finders, as treasure trove, wrecks of the sea, great fishes, sturgions, and wapses, which are said to be the goods of no other man, therefore the King by his prerogative shall have them: He also by the common law shall have in his own possession, all such things, which by the Law of nature ought to be common, as wild beasts and fowls,

Bracton Lib. 2. cap. 1. nota 1.

Br. Action sur lestatut 48.

Br. Quo warranto 7.

Anno 6. E. 2. 22. assisarum p. 34.

Lib. Intrac' in Quo warranto 2.

Bracton Lib. 2. cap. 24.

that

that are not tame, which by the law of nature ought to be common, and are made proper by the poſſeſſion and taking of them, as by fowling, hunting, and ſuch like. And although men may kill ſuch wild beaſts in their wildneſſe, when they are found wandring, being out of any Foreſt, Park, Chaſe, or Warren: Yet no man hath any property in them, until they have killed them; for, during the time of their wildneſſe, they are Nul ius in rebus, and then they muſt needs be ſaid to be In manu domini regis, in the Kings poſſeſſion: And then the King may priviledge them in any place where he will appoint, and ſo prohibite any man to kill or deſtroy them.

2. How a Foreſt is made, and what doth make the ſame a Foreſt.

When the King is minded and determined to make a foreſt in any place that is meet for the ſame, he doth grant a commiſſion out of his Court of Chancery, under the great Seal of England, directed to certain wiſe and diſcreet perſons fit for that purpoſe, therein declaring that his will and pleaſure is, to make a foreſt in ſuch a place, in ſuch a ſhire, within ſo many miles of ſuch a place; and therefore by the ſame Commiſſion he doth will and command them, that they ſhall diligently perambulate and view all the whole Countrey and Shire within ſo many miles compaſſe, and ſo much of the ſame, as they by their view and perambulation ſhall think meet and conbenient to make a foreſt of, for his delight and recreation, to bound and meer the ſame, by ſufficient marks, meers and boundaries, to inviron it round about, ſo that by thoſe marks, meers and boundaries, the circuit and whole compaſſe of the foreſt may unto the King be known, and diſcerned from other land which is not foreſt. And alſo, further willing and commanding

manding them, that they shall certifie him of their proceeding therein, in his Court of Chancery, before such a day, &c. And then, when these Commissioners have met together, and that they have viewed and considered of the whole circuit of ground, whereunto they were by their Commission directed, how much of the same is to be made a forest, & how much is not meet for that purpose, then they do make their perambulations round about the same, and do limit out the circuit and compasse of ground, that shall remain Forest, and do meer and bound the same, with great Hills, Rivers, and Highways, and sometimes with Trees, that are notably known, so that the same may evidently be known from time to time, by those marks, meers and boundaries, which is Forest, and which is not Forest; And when they have this done, they return their Commission into the Chancery, and do therewithall certifie the circuit and compasse of ground, that they so meered and bounded, beginning at such a bridge, over such a River, the highway over the same, leading from such a place to such a place, as the highway there goeth all on the right hand of the same highway is forest, & so directly from mark to mark, meer to meer, and boundary to boundary, inbironing the same round about, untill they do come to the same place where they first began their perambulation: and then this being so by them returned, and certified into the Chancery, then the King is intituled unto the same by matter of Record. But, nevertheless the same is not yet a Forest: But now, all this being done, if the King do like of the place that they have so returned and certified, and do also continue his former determination therein, then he doth cause a Writ to be made out of the same court of Chancery, directed to the Sheriff of the same Shire, wherein the place is, that they have so returned for a Forest, reciting

Le roy avera certain choses per matter de record & non alliter, vide 14. E. 4. fol. 2. Consimile Br. prerogative 70.

citing in the same writ briefly, the whole proceeding of the said Commissioners, & the circuit of ground that they have viewed and perambulated, and their return and certificate of the same, and that they have appointed so much ground as is comprehended within that circuit or Territory of ground, inbroned with those markes, méers, and boundaries, to be a forest, and so reciting all the whole territory of the forest, by the markes, méers and boundaries, as they returned the same, verbatim, commanding the Sheriff by the said writ, to make open Proclamation throughout all his whole county, as well in all Borroughs and other Townes, as also in all faires, markets, and other publick places, that the King hath appointed, all the whole Territory of ground, inbroned with these markes, méres and boundaries, &c. according as the same is meered and bounded, and returned into his Court of Chancery, to be and remain a forest, and that no manner of person or persons whatsoever shall after such a day hunt or chase there after any manner of wild beasts of venery or chase, for that the Kings will and pleasure is, that all the wild beasts, remaining & being within the territory of the same, shall remain & be there, in safety and firme peace, for his delight & pleasure only. And after such proclamation made and returned into the Chancery by the Sheriff, the same is no perfect forest yet, but a chase: for, the perambulation, made as is aforesaid, and also, the return and certificate of the same into the Chancery, by matter of record, without any such Proclamation, doth not make the same either a forest or a chase, but only a Territory of ground: for, although the King be intituled unto the same as a forest by matter of record by the Return of the perambulation, yet the same is neither forest, nor chase, until that it be openly proclaimed by the Kings commandment to be a forest, to the end that ever-

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ry man may by the same proclamation take notice, that the Kings will & pleasure is to have the same to be a forest. And so it appeareth that the perambulation made of the place, and the meering and bounding of the same, the certificate thereof by matter of record, & then the Kings Proclamation, as is aforesaid, & the return of the same, all these things do not make the same place a forest, but onely a chase as yet. And then after all these things perfected, as is aforesaid, to make the same a perfect forest indeed, and to have it indure and continue a forest, the King doth make and appoint certain meet Officers for the same, as Verderors, Forresters, Regardors, Agisters, and Woodwards, as hereafter in another place more at large shall be declared. And then a Forest being thus made, and such Officers appointed for the same, there are certain proper Laws and Courts, as, the Court of attachments, or Woodmote, the Court of Swanimote, and the Court of the Lord chiefe Justice in Oyer of the Forests, which are incident unto a forest, even as a court of Baron is incident unto a Manor, or a Court of Pipowders unto a fair: so that until the same have these officers and courts aforesaid, the place is but a Chase, and not a Forest. So that hereby you may see how a forest is made, and how a Chase is made, and when the same is a forest, and when a Chase, and what doth make a Chase, a Forest.

A Swanimote Court doth not make a Forest, but a Justice seat doth make it, Bulst. 2. part 296.

But yet here is to be noted, that all forests have not every one of these Officers belonging to them, for there are some forests that have no Agisters, because the King hath no woods in those forests to Agist, but in every forest, where the King hath any woods to Agist, there must be of necessity Agisters belonging to those forests, to the end that the King may be answered by them of his Agistment of his woods, and of the good government of the same.

Both

Both Master Hesket and Mr. Treherne in their reading of the Laws of the forest, do affirm that, in like manner, for the making of a forest, a Writ may go out of the Chancery to the Sheriff of the Shire, to enquire what place is most conbenient to make a forest in, whereupon the Sheriff shall charge an inquest to inquire of the certainty of the place, and to meer and bound the same, and to put those marks, meers and boundaries in writing, and then to certifie the same into the Chancery, and when the King is thereof ascertained by matter of Record, he may then direct his writ out of the Chancery to the Sheriff of the same Shire, commanding him that he shall cause it to be proclaimed in the Kings name, that the place, which he hath so certified shall from thenceforth be and remain a forest, and that all manner of persons shall refrain from Hunting or Chasing of any of the wild beasts within the boundaries of the same, and then upon the Proclamation of the same made and returned into the Chancery, as is aforesaid, the same is yet but a Chase, notwithstanding all this, until the King doth appoint Officers and Laws for the same, as aforesaid, which things do make the same a forest.

Master Hesket in his reading f. 10. Treherne, fol. 5.

And also it appeareth by the Statute of 31. of King Henry the eight, Cap. 5. that the said King having builded and made Hampton Court a most beautiful and sumptuous Manor, decent and conbenient for a King, adorned with princely Parks, Gardens, Orchards, and other things of great commodity and pleasure, meet and requisite for his most Royal person, and also for the further advancement and amplification of his most princely pleasures and delights there, he assigned and limited a certain Territory of ground, lying and being within the precincts of Eastmulsey, Westmulsey, Walton and Esher, neer adjoyning unto his said Manor

A Forest made by Act of Parliament, An. 31. H. 8. cap. 5. Vid. Co. 4. Inst. 301. the exposition of this Statute, and the ground of it.

nor of Hampton Court, to be a forest, which Territory of ground he hath meered and bounded with certain convenient meers and boundaries, and appointed the same for the nourishing, generation, and feeding of wild beasts of venery and chase, and also for beasts and fowls of Warren, which Territory of ground was made a forest by the said Act of Parliament of 31. H. 8. cap. 5. which Statute did also enact, that the said forest should have all such laws and offices meet for the punishment of all offenders in the same, as all other forests within this Realm have had, and used heretofore: so that hereby you may see that a forest may be made by act of Parliament. And after that the King had so made the same a forest, as aforesaid, he by the same Act decorated the Manor of Hampton Court with the name and title of the honour of Hampton Court: and because the King had afforested the lands of divers other persons to their prejudice and hinderance, he of his princely Clemency, to shew his most gracious benignity towards the owners of the same ground, was contented to covenant with them to allow them certain priviledges in recompence thereof, and also to allow them that they might cut down their woods within the precincts of the same without license of the King, or any of his Officers, and also to make great fences and hedges about their Corn, to keep the same from the Deer.

As I do take it, a great part of our most antient forests in England had their first beginning in this manner, when this Realm, at the first being a wilderness full of great huge woods, because it was not inhabited with people, the same was also full of wild beasts almost of all sorts that are commonly known in England, and after the same began to be inhabited with people, they did daily more and more destroy the woods

and

and great thickets, that were nèr unto the places where they did inhabit, so that still as the land increased and flourished with people, whose nature could not endure the abundance of sabage beasts so cruelly to annoy them as they then did, they sought by all means possible how to destroy such great woods and coberts, as were any way nèr unto their places of habitation. thereby to drive the wild beasts further from them. And so by that means the wild beasts were all driven to resort to those places where the woods were left remaining, to make their abode in them, and so those places, whereas the great huge woods and thickets were left remaining, which then were many, and being full of wild beasts in the Saxons time, they called those places palor or Walds, that is to say, forests or woods: so that I do gather thereby, that the first beginning of forest in England was propter defectū inhabitantis populi, for want of people to inhabit those bacant places wherein wilde beasts were: and as our Chronicles do make mention, in the time of the Saxons, when Edgar a Saxon was K. of this land, which was in the yeer of our Lord 959. he did greatly destroy the wolves and foxes both in England and Wales, so that he left but few wolves nor foxes remaining, for which the Welchmen paid him yeerly a certain tribute of wolves skins, and then, when those and such like rabenous and cruel beasts, as the wolves were, that did destroy both man and beast, were banished, the residue that were then remaining, being beasts of great pleasure for the King and for noble men to hunt and chase, and also dainty meat for the King and the best sort of men in the Realm; the Kings of this land began to grow carefull for the preservation of them, and therefore they began to privileage the woods and places where those wild beasts were remaining, which was in the great woods that then were left undestroyed, so that no

Holenshed, in his description of Britain, pa. 222. 260.

man

man might hurt or destroy them there, and so those places, where the wild beasts were then remaining, became forests. And then all wild beasts, birds, and fowls, that were Feræ naturæ, wild by nature, were the Kings only, in whose ground or land soever they were in any place, in the Realm, as well those that were out of forests, chases, parks and warrens, as those that were remaining within any of them; so that it was not lawful for any man to hurt, kill, or take, any wild beast, bird, or fowl, within his own ground, without being punished for the same, until that Canutus the Dane came to be King of this land; which was in the yeer of our Lord 1018. who, as it seemeth, did appoint such forests and chases as then were, their limits and bounds certain; and to the intent to have his own forests, and other priviledged places the better preserved from offendors in them, in the first yeer of his Reign, at Winchester he made this Law, which in the Danish tongue doth begin thus: *Ic will that Ile one &c.* which in Latin is this, Volo, ut omnis liber homo pro libito suo habeat venerem sive viride m in planis suis super terras suas, sine Chacea tamen, & devitent omnes meam, ubicunque eam habere voluero. In English thus, I will and grant that each one shall be worthy of such venery as he by hunting can take either in the plains or in the woods within his own fee or dominion, but each man shall abstain from my venery in every place where I will that my beasts shall have firm peace and quietness, upon pain to forfeit as much as a man may forfeit: which law was afterwards confirmed by divers Kings. And in this manner, I do think, forests did first begin, and thus much for this matter.

Holenshed in his description of Britain, pa. 206.b.60.pag. 208.a.20.

3. In what places Forests ought to be made.

NOw it hath been shewed already how a forest is made, it is necessary likewise to shew, in what places,

places, forests were and ought to be made. And for that, it appeareth in the Red Book, which remaineth in the Exchequer, called Liber Rubrus, in these words, Non in quibuslibet locis est Foresta domini Regis, sed in certis, scilicet in locis Sylvestribus, that is, The Kings Forest is not in every place, but in certain places meet for that purpose, that is to say, in the woody countries: Wherein it doth appear, that Forests were always appointed in the woody countries where great store of coverts were. And in another place in the said book the words are these, In singulis comitatibus foresta Regis non est, sed in nemorosis, ubi ferarum latibula sunt & uberiores pasturæ, The Kings Forest is not in every country within this Realm, but in the woody countries, where the secret abiding of the wild beasts are, and fruitful pastures for their feed. And afterwards in another place in the same book, it followeth in these words, Numquid in singulis comitatibus Foresta Regis est infra Regnum? non, sed in saltuosis locis &c. Is the Kings Forest in every country within this Realm? No, but in the woody grounds, where the secret abiding of the wild beasts are, and in pleasant feedings and lawnds, &c. By this it appeareth, that it is incident to every Forest, to be as well replenished with woods, as to have pleasant feedings and lawnds for the Kings Deer. And in another place in the same book it is written thus, Foresta est tuta ferarum mansio, non quarumlibet, sed tantummodo sylvestrium, A Forest, saith the said book, is a safe abiding place of wild beasts, not of all manner of wild beasts, but only of those that are belonging to the woods. By this it appeareth, that Forests were made chiefly, at the first, but for beasts of the woods, and no wild beasts are proper beasts of the Forest, but those that do haunt the woods: And therefore it followeth of necessity, that Forests must be made where there are great store of woods. It

In Libro rubro Scaccarii.

Ibidem.

Ibidem.

Ibidem.

Charta de Foresta, articulo primo.

doth appear by Charta de Foresta, in what places Forests were made, by these words, Omnes Forestæ quas *Henricus* avus noster afforestavit, videantur per bonos & legales homines, Et si boscum aliquem alium, quam suum domini cum afforestaverit ad dampnum illius, cujus boscus ille fuerit, statim deafforestetur, All Forests, which King Henry our grandfather afforested and made, shall be viewed by good and lawful men, And if he have made forest of any other mans wood, besides his own demesne woods, whereby the owner of the woods hath hurt, then we will that they shall be forthwith disafforested: There the Statute doth speak but only of the afforesting of the woods of other men, nor of the disafforesting of any thing but only of the woods of other men; And yet there is no doubt, but the meaning of the Statute in the same place is, that all the lands and other grounds, that were before that time newly afforested by the said King Henry the second, should be disafforested, as well as those that were Woods. And likewise it doth appear by the words of the same Charta de Foresta,

Charta de Forestâ, artic. 3.

articulo tertio, in these words, Omnes autem bosci, qui fuerunt afforestati per Regem *Richardum* avunculum nostrum, vel per Regem *Johannem* patrem nostrum, usque ad primam Coronationem nostram, statim deafforestentur, nisi sit dominicus boscus noster, which is: All Woods which were afforested by King Richard our Uncle, or by King John our Father, until our first Coronation, shall be forthwith disafforested, unless the same be our own demesne woods: In both which places, this word Boscus is still used, for the same Charter purporteth, that all woods that any of those Kings had afforested, should be disafforested, unless they were the Kings own demesne woods, as though neither of those Kings had afforested any thing either of their own grounds or other mens, but woods: Whereby you may gather,

that

that, for the most part, there was very seldom any thing affforested, but only woods or woody grounds. And because that in times past woods and great woody Countries not much inhabited with people were full of wild beasts, therefore this word Silva in Latin, being a Wood in English, is commonly taken for a Forest: as King David in his 50. Psal. and 10. vers. saith, Non accipiam de domo tua vitulos, neque de gregibus tuis hircos, quoniam meæ sunt omnes feræ silvarum, Jumenta in montibus, & boves, I will take no bullock out of thy house, nor he-goats out of thy folds, for all the wild beasts of the Forest are mine, and so are the cattels upon a thousand hills: And in like manner the same word Silva, in many places, is taken for a Forest, and so is this word Saltus, a Wood, taken for Forest. And in the Saxon and Celtike tongue, great and huge woods are called palor, that is to say, Woods or Forests, because woods were forests. And so hereby we may learn by the signification of the word, the nature and quality of the place in which Forests were made.

Psalm 50. verse 10. after Saint Hieromes translation, 49.

4. Whereof the same receiveth the name of a Forest.

Although that this word Silva, a Wood, be oftentimes taken and translated for a forest, as in the 104. Psalm of the King and Prophet David, verse 20. Posuisti tenebras, & facta est nox, in ipsa pertransibunt omnes bestiæ silvæ, Thou makest darkness, that it may be night, wherein all the wild beasts of the forest do move. And likewise this word Saltus, a Wood, is often translated for a forest: As in the second book of Kings, the second chapter, verse 24. Qui cum respexisset, vidit eos, & maledixit eis in nomine Domini, egressique sunt duo ursi de Saltu, & laceraverunt ex iis quadraginta duos pueros, And he turned back and looked on them,

In the Psalms after S. Hieroms translation 103

In S. Hieromes translation 4. book of Kings, cap. 2.

and cursed them in the name of ꝑ Lord, and two Bears came out of the forest, and tare in pieces two and forty children of them that mocked Elisha. And yet neither this word Silva, nor Saltus, are properly Latin words for a forest, but rather for a wood, and are taken and used for a forest, because that a forest is a place full of woods; and therefore a good forester is called a good Woodman: for, albeit that of late time we use to say Forestarius a forester, yet the antient Writers do rather say Saltuarius, a Woodman, which doth prove that a forest in the Latin tongue hath his name derived from the word Silva, or Saltus, a Wood, because that wild beasts have always had their abiding places in woods: but yet it doth not therefore follow that every wood is a forest, although that there be Deer and other wild beasts in the same, except that the same wood be especially privileged by the King for them to rest in a firm peace. And such a wood so privileged is called by Budæus, in his second book De Philologia, Silva sacrosancta, a privileged wood for wild beasts to be safe in. And in another place, he calleth a forest, Saltus sacrosanctus, a privileged wood for wild beasts: so that a wood privileged for wild beasts, and a forest, are all one, or, as it were, divers words of one signification. Budæus useth this word Saltuaria sacrosancta, for a forest: for speaking of matters of Hunting, he saith thus, in quibus saltibus ferarum greges sacrosancti sunt, legum regiarum sanctionibus quos aquarias saltuariasque dicimus, those woods, in which the herds of wild beasts are privileged, even by the Canons of Princes Laws, those we call forests, saith he. And hereupon the Latinists have framed this Latin word, Foresta, for a forest, being compounded of those two words, fera, and Statio, so that Foresta, est ferarum Statio, which is, that a forest is a safe abiding place for wild beast. And even according to the same manner,

Budæus, in lib. 2. Philologiæ.

Budæus in 2. libro de Philologia.

Ibidem.

manner, imitating the Latiniſts, we have framed this Engliſh word, a foreſt, being compounded of theſe two words, For, and Reſt: And becauſe a foreſt is a ſafe abiding and priviledged place for the Kings wild beaſts for reſt, which words (For and Reſt) being put together and made one word, is Forreſt, or a Foreſt, taking his name of the nature of the place, which is priviledged by the King for his wild beaſts, to have their ſafe abiding in foreſt. Budæus in his Treatiſe of Hunting in French, uſeth to ſay une Foreſt, for a foreſt, little differing from our Engliſh word, foreſt, or from the Latin word Foreſta. Budæus in his Treatiſe of Hunting, in French, p. 276

5. The Antiquity of Foreſts.

THe Antiquity of foreſts muſt needs be very great, for they are ſo antient, that there is no certain beginning of them that can be ſhewed, howbeit there may be many teſtimonies to prove that foreſts have been of long time, yea many hundred yeers, but yet in what place of the world, or in what time they did firſt begin, no man can certainly tell. We read in the 50. Pſalm of David, verſe 10. whereas David ſpeaking in the perſon of God, ſaith, I will take no bullock out of thy houſe, nor he-goats out of the folds, for all the beaſts of the foreſts are mine, and ſo are the cattels upon a thouſand hills: Hereby we may gather, that there were foreſts of wild beaſts in the Prophet Davids time. And likewiſe in the 131. Pſalm, verſe the 6. the words are theſe; Lo, we heard of it at Ephrata, and found it in the fields of the foreſts: By this we may likewiſe gather, that there were foreſts in the time of King David. Polydor Virgil in his book de Inventoribns rerum, ſaith, that foreſts, parks, and warrens were firſt made by Fulvius Herpinus, which was before the coming 50. Pſalm, verſe 10. Pſalm 131. verſ. 6. Polydor Vir. de Inventoribus rerum.

Crisp. French chron. f. 93.

ming of Christ. We read likewise in the French Chronicle of John Crispin, that Philip of Macedonia had forests to hunt in, for places of recreation and delight: so then if Forests were in his time, they were before the coming of Christ. We read that Canutus the Dane, and King of this land, made certain Canons or Laws for Forests in the yeer of our Lord 1016. which you may read in the beginning of this Book. But Forests were here in England before his time.

Hollingshed in his description of Britany, pag. 2083.20.

The Forests within *England* being in number 69. except the New Forest in *Hampshire* erected by *William* the Conqueror, and *Hampton-Court* Forest by *Henry* the eight, are so antient that no Record maketh mention of the erection of any of them, *Co. 4. Inst. 319. ibid. 293, 294.*

6. What benefit doth grow to the King by the preservation of Forests.

If a Forest of the Kings be carefully and diligently looked unto, kept, and preserved, as it ought to be, by good and profitable Officers, which have the charge and care thereof committed unto them, then there doth grow unto the King by a Forest, especially these two benefits, that is to say: First, the plenty and increase of Deer, as well for the provision of Venison for the Kings Court, as also for the princely delight and pleasure of the King to hunt for his recreation, when his Grace is wearied with the burden of cares in matters of the Commonweale: Secondly, the great woods and timber trees as well of his Subjects, as of his own demesne woods being within the forests, are most especially preserved thereby, to be in readinesse when the King shall have need of them, which otherwise would be cut down and destroyed: for, the slender and negligent execution of the Forest Laws hath not only been the decay and destruction of the Deer almost in all places within this Realm in Forests, but also of great Wood and Timber,

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the want whereof, as well at this present time, as in time to come, shall appear in the Navy of this Realm. And furthermore, the want of the execution of the Forest Laws doth breed the ignorance of them so much, as it is at this day: For, those Laws, now, are not only out of use in most places, but also grown into contempt with many inhabitants in Forests. I do not speak this to that end, that I would have Forest Laws rigorously executed upon offendors in Forests; but to have them so executed, that Forests may be still known for Forests, and the Game preserved for his Majesty: for otherwise, it were better to disafforest them altogether, and then his Majesty shall be discharged of the great Fees that are yeerly paid to Officers of the Forest, out of his Majesties Court of Exchequer.

CHAP. III.

1. *Who may make a Forest.*
2. *Who may have a Forest.*
3. *How a Forest may be granted by the King to a Subject.*
4. *That a Forest, granted in some sort to a Subject by the King, shall be but a Chase in the hands of the Subject.*

1. Who may make a Forest.

AS it hath been always holden for a general opinion, amongst the learned in the Laws of this Realm, that the King only, (de Jure gentium, or, as they say, by the Common Law,) may make a Forest in all woods, or places wheresoever he will appoint:

Bracton Lib. 2. Cap. 24. Vide Master Heskets reading, fol. 8. Mr. Trehern, fol. 5.

point: so likewise, it is as general an opinion of the contrary part, that no other person or persons whatsoever, can make a Forest, but the King only, and such as are especially authorized by him so to do, because the King hath that Sovereignty and Royal Prerogative reserved to himself only.

2. Who may have a Forest.

The reason why tis said that a Subject cannot have a Forest, is because a Justice-seat is incident to a Forest, and none can make a Justice in Eyre but the King, Bu.str. 2. part 295. In the Duchy Court.

And whereas it is a common opinion of some, rather then of any good ground or authority, that no Subject of this Realm may be seised of a Forest; for (as some say) that franchise which is a forest in the hands of the King, is properly but a Chase in any Subjects hands. Yet it is to be shewed by the Records of the Court of the Duchy of Lancaster, that the Earle of Lancaster, in the time of King Edward the second, and King Edward the third, had a Forest in the County of Lancaster, and in the County of York, in the which the said Earle did execute the Forest Laws, as largely as ever any King of this Realm did: and even at this day there are no Records so much followed in the executing of the Forest Laws within the Kings Majesties Forests, as those that were executed by the said Earl in his Forests: And therefore, whosoever will be learned in the Forest Laws must diligently study the Assises of the Forest of Pickring and Lancaster: In which assises there are plentiful Examples and Presidents of matters already adjudged & tried, yea almost for every matter that can be spoken of or come in question touching Forests. And therefore the Assises or Iters of Pickring and Lancaster are, as it were, the Books of Peers and Terms, unto the Forest Laws, even as the books of peers, and terms that are printed, are unto those that study the Common Laws of this Realm.

Realm. It doth appear by the Records remaining in the Duchy of Lancaſter, that in Anno decimo of Edw. 3. the Earl of Lancaſter, being a Subject, and Lord and owner of a Foreſt, did give license unto another to make and incloſe a Park within the meers of the ſame Foreſt, to have and to hold the ſame Park incloſed, with all ſuch Menſions as the grantee ſhall put therein, to him and to his heirs for ever: And this was admitted and adjudged for a good license, in a claim made by the grantee; ſo that thereby it doth appear, that a Subject may be owner of a foreſt, and that a foreſt may be, and remain a foreſt ſtill, being in the hands of a Subject. It doth alſo appear by the ſaid Records, that the Earl of Lancaſter, being tenant in taile of the honour and Foreſt of Lancaſter, did by his deed grant unto I. H. license to make a Park within the Foreſt, &c. and after the ſaid Earl died, it appeared that this deed could not binde his heir, &c. And therefore I. H. did make a fine of ten pounds with the next heir to the intent that his Park might continue, Anno decimo Edw. 3. fol. 69. which doth prove, that a Subject may be Lord and owner of a Foreſt. In Itin. Lancaſt. an. 10. E. 3. fo. 64. In Itin. Lancaſt. an. 10. E. 3. fol. 69.

And alſo it doth appear by the recital of the Statute of 22. of Edw. 4. cap. 7. which Statute was made for the prohibition of ſuch as had woods within Foreſts, that they might lawfully incloſe and fence their woods being cut down within foreſts, which Statute hath relation as well to thoſe that have woods within the Kings foreſts, as to thoſe that have woods within the foreſts of other men, by expreſſe words, which doth prove, that a ſubject may be owner of a foreſt, and alſo have a foreſt. The ſtatute of 22. E. 4. cap. 7.

And it doth appear by the Caſe of the Duke of Lancaſter, in Anno 26. E. 3. that King Henry the 3. being ſeiſed of the honour of Pickring, unto which a foreſt was then appendant, did give and grant the ſaid honour of Pick- 26. alli arum, placito 60.

Pickring, Cum omnibus suis pertinentiis, unto Edmond Earl of Lancaster, in fee, and by that grant of the honour, Cum omnibus suis pertinentiis, it was there judged that the whole Royalty of the Forest did passe unto the said Earl of Lancaster: by this it is proved, that a subject may be Lord and owner of a forest.

Hillar. 42. E. 3. fol. 2. p. 8. And it doth appear by the Case in 42. E. 3. that a forest, being a forest in the hands of the King, may be granted by the King to a subject by the name of a Forest; and yet the same shall be a forest still in the hands of the grantee being a subject, which doth prove that a subject may be owner of a Forest.

An. 27. H. 8. cap. 7. And also in Anno 27. of King Henry the eight, an Act of Parliament was made for the reformation of divers grievous disorders, exactions and oppressions, that then were used and exacted upon the Kings subjects, by colour of the Forest laws in Wales, as well within such Forests as were the inheritance of the King, as in other Forests, whereof Lords, and other meaner men were owners; whereby it doth appear that a Subject may be owner of a Forest, And according to the same,

Bracton, lib. 2. cap. 24. Bracton in his second Book, and Chapter 24. De libertatibus, speaking of the Priviledges of the King, and what Priviledges the King may grant, hath these words. Ea verò quæ dicuntur privilegia, licèt pertineant ad coronam, tamen à Corona separari possunt, & ad privatas personas transferri, sed de gratia ipsus Regis speciali, Those things which are called Priviledges, although that they do belong unto the Crown, yet notwithstanding they may be separated from the Crown, and assigned to private persons, but that is of the Kings especial favour and grace, saith he; which as it doth there appear, is understood of Forests, and such like things. And so, to conclude, there is no doubt, but that a Noble man, or a common person, may have a

Forest

Forest by especial grant from the King or Prince, under the great Seal of England, as the Duke of Northfolk in times past had: And also the Lord of Burgaveney had a Forest in Sussex, called the Forest of Saint Leonard. Also it doth appear, that the Duke of Buckingham had divers Forests, as the Forests of Brecknokhay and Causellay, and others, which notwithstanding that they were in their hands being Subjects, yet they were forests still, and of the nature of forests, as it doth appear, in that they did punish the offendors in those Forests, by the Laws of the Forest. And there are now even at this day, some Noble men within this land, that have Forests of their own by the grant of the King, made to them or some of their Ancestors: and if any offendors be found trespassing in any of those places that are such forests, then they shall be punished for the same offence according to the Laws of the Forest, and according to the quantity of their trespasse.

Dyer, fol. 169. Dim. North habet forestas de Weybridge & Sapley in fee.

3. How a Forest may be granted by the King to a Subject.

HOw, and in what manner, a forest may be granted by the King to a Subject, Master Treherne, in his Reading of the Forest Laws, doth partly declare, where he saith, that if the King be seised of a Forest, and by his Letters Patents under the great Seal of England, he doth grant the same Forest by the name of a forest unto a Subject, Habendum sibi & haeredibus suis, cum omnibus incidentibus appendiciis & pertinentiis, there the grantee of the King, or his heirs, shall have the same, as a Forest, by that grant, and all Officers that do belong unto the Forest, and that then were there before: a Justice in Eyre of the same Forest to determine the Trespasses there done only except. But saith

Mr. Treherne fol. 5. M. Hesket, f. 7.

Ibidem. saith Mr. Hesket and Mr. Treherne, he, that is such a grantee of a Forest, may hold a Court of attachments every forty days, and also a Court of Swanimote, in such sort as the Law doth appoint the same to be kept: But if he will hold a Court of Justice-seat, to punish such as are presented in those Courts for trespasses done in the same Forest, then such a grantee must procure a special Commission from the King in that behalf, under the great Seal of England, directed to certain persons, authorising them to hold plea of all Trespasses done in the same Forest, and to hear and determine the same: For, although that such a grantee, by his grant may have the same as a Forest, yet he cannot appoint a Justice in Eyre, himself, to determine such trespasses as are done there, except the King had granted unto him by especial words, Jura Regalia, as the Earl of Lancaster had in Edward the seconds time, for his Forests.

26. Assisarum, placito 60. And it seemeth to my understanding by the said case of 26. E. 3. that things incident and appurtenant to a forest may pass by the grant of a forest Cum pertinentiis, as well as by the grant of an Honour Cum pertinentiis, the royal franchise of a Forest may passe.

But it seemeth by their opinions also, that if the King be seised of a forest, and by his Letters Patents under the great Seal of England, he doth grant unto a Subject the same forest, Cum omnibus suis incidentibus, appendiciis, & pertinentiis, and also further by special words, that the grantee shall have full power and authority, to ordain and appoint a Justice or certain Justices, to hold plea of all matters concerning the same Forests, and to hear and determine all trespasses and offences that shall be done within the same, then such a grantee shall not only have the same as a forest, but he hath also by that grant Jura regalia, that is to say, a kingly

kingly power in that behalf, for as much as he may now by that grant hold a Justice-seat for the same forest, and appoint Justices to hear and determine the trespasses of the forest, and punish the offendors for the same. It seemeth, that divers Abbots and Bishops heretofore have had Jura regalia in many things, as the Abbot of S. Albans, and the Abbot of Glastonbury: vide Secretum domini, fol. 78.

Vide Liber de Itinerationis in titulo Franchises 1. fol. 358.

4. That a Forest, granted in some sort to a Subject by the King, shall be but a Chase in the hands of the Subject.

IT is said by Sir William Thorpe, Lord chief Justice of England, in Anno 42. of E. 3. that if the King do purchase a Manor, unto which Manor a Franches royal, as a forest or such like, is regardant, and afterwards the King doth give the same Manor unto another, Simul cum libertatibus ad illud spectantibus: by that grant, no franches royal, nor liberties, do passe: for, by the purchase of the Manor by the King, the franches royal and all liberties were annexed unto the Crown, but it is contrary, if the King do give the same Manor, Cum libertate ad illud spectante, tempore, quo manerium fuit in manibus feoffato is; for by the purchase of the Manor by the King, the franches royall is extinguished, and cannot passe from the King by the grant of the Manor, without special words that do amount to a new grant.

43. Assisarum, placito 10. Bract. saith that two Acts of Parliament have been made, the one, 10. E. 4. the other, 6. H 8. that a Subject may have a Forest but not a Justice-seat, for this is regal, Bulst. 2. part. 297. Yet there Mountague chief Justice said, that the Statutes which make mention of Forests, they are but nominal, not real, ibid. part 298

And further, it seemeth by some opinions, that if the King be seised of a forest, and by his Letters Patents under the great Seal he doth grant the same unto a Subject,

M. Treherne fol. 6. M. Hesket 7.

Kelway. 145. Bulstr. 2. part 298. repl. 150. Vide 42 E. 3. fol. 2. placito 8.

Subject, by the name of forest, Cum omnibus suis parcellis, yet the same shall be but a Chase in the hands of the grantee, for they say, that by that grant, the grantee cannot hold any Court of Attachments nor Swanimote, and therefore the same shall be but a Chase in the hands of the grantee, for the same cannot be a forest, unlesse there be incident unto it, a Court of Attachments, a Swanimote, and also Verderors, Regardors, and other like Officers.

* But if the King also grant that the Subject shall make a Justice-seat, here the Subject shall have it Forest, Bulstr. 2. part 297. & Co. 4. Inst. 314.

Hillarii 42. E. 3. f. 2. p. 8.

And it doth appear by the said Case of 42. E. 3. that a forest, being a forest in the hands of the King, may in some sort be granted by the name of a forest unto a Subject, and yet the same shall be but a Chase in the hands of the grantee.

Dier, fol. 169. placito 1.

It doth appear in Termino Michaelis, An. 1. & 2. reginæ Elizab. that King H. the 8. by his Letters Patents, dated in the 33. yeer of his Reign, Ex certa Scientia, & mero motu, suis, did give, grant, and to farm let, unto Sir Richard Cromwel Knight, Forestas suas de Weybridge & Sapley, in the County of Huntington, Habendum sibi, cum suis partibus, membris, parcellis, & pertinentiis universis, for the term of 80. years, paying for the same, to the King, 61. 13 s. 4 d. by the yeer, &c. with this clause, Scilicet, & prædictus Richardus Cromwel, executores, & assignati, sui, custodient, habebunt, & manutenebunt in Forestis prædictis, de tempore in tempus, durante termino prædicto, centum damas, & easdem, seu alias consimiles, in numero, in prædictis Forestis, in fine termini prædi dimittent præfato regi hæredibus & successoribus suis: without any other reservation of the game: And now the Lord North, which hath the fee simple by grant from the King, will take the game, and give

give warrants there; and it was there thought by the opinion of the most part of the Justices and Serjeants of both the two houses, and the Attorney of the King, that he cannot do so, for that all the game was included in that word and name of forest, and the hundred Dær are not reserved to be killed, nor any of them, for then it is not possible for the Lessee to perform his covenant, ut supra, but the same is reserved onely for the maintenance of the Game and Forest.

It is thought that the grantee Sir Richard Cromwell shall have the same as a forest by that grant, and that he may hold a Court of Attachments, and Swanimote Court, but no Justice-seat, without a special Commission for that purpose, granted from the King, so that if any man shall commit any Trespasse in the same forest, the grantee may punish them according to the Forest Laws; but if the same were but a Chase, he could not so do, but were forced to bring his action of trespasse at the Common Law, Quare Chaseam suam fregit; or else, to indict the offendors for a trespasse done in the same: And so you may see, that a forest granted by the King to a Subject, by his Letters Patents under the great Seal, by the name of a forest, in some sort shall be a forest still in the hands of the grantee being but a Subject.

The last Prince Henry had a Forest granted to him, with a power also to make a Justice in Eyre, and license to keep Courts and the Duke of Lancaster also had such a grant, with a special Commission to make a Justice in Eyre for keeping of Courts, Bulstr. 2. part 295. An. 1 & 2. Eliz. Dier, fol. 169. b. placito 1.

It may be gathered by the said Case of my Lord Dier, in 1. and 2. of Queen Elizabeth, in the grant made by the King of the said forests of Weybridge and Sapley unto Sir Richard Cromwel, that if the King had granted Forestas suas de Weybridge & Sapley in Com. Huntington, habendum Richardo Cromwel, &c. Leaving out these words, Cum suis partibus, membris, parcellis, & pertinentiis universis, although that the residue of the same grant had been as it is there, and the whole covenant for the maintaining and keeping of so many

King R. 2. granted to Thomas Duke of Gloucester in especial tail the Castle of St. Briowel and the forest of Dean, and by authority of Parliament it is enacted that the said Duke should hold the said forest as a forest, and to constitute such Justices and Officers, &c. as belong to a forest, Co. 4 Inst. 315.

many Deer in number in those two forests by the grantee Sir Richard Cromwel, yet then the grantee should have had those two forests, but as two frank Chases, and not as forests, for there it is clearly holden, that by the word and name of forest in that grant, all the Deer and Game are included, but nothing else of a forest: And therefore, if the King be seised in fee of the royal franches of a forest, and by his Letters Patents doth grant the same by the name of a forest unto a Subject, although that by that word and name of a forest, all the Deer and Game in it are included, yet if there be no farther words included in that grant, that may enable the grantee to keep and hold the Courts of Attachments and Swanimote, which are incident to every forest, then the grantee shall have the same forest so granted by the name of a forest, but as a frank Chase, and not otherwise: for over and besides the word and name of forest, the grantee must have words that may enable him to hold and keep those Courts that are incident to a forest, or else the same shall be but a frank Chase only. Note the difference.

Note, This Terme all the Justices and Barons met at Serjeants-Inn to conferre of matters concerning the forest of Leicester, by the Kings Command; the forest being the Kings in right of his Dutchy of Lancaster; upon these Questions: First, whether the owners of woods in a forest or chase, in the hands of a Subject, may fell them at their pleasure without License, and keep them incoppiced as long as they please. Secondly, whether the owners of land within such a forest might erect Lodges for warrens, or make Coney-berries, or keep Sheep there. Thirdly, whether they who affirm that they have Parks within such a forest, by Charter or Prescription, which

which have lain open for forty year or more, may now enclose them, and keep them enclosed as Parks. Fourthly, whether Deer coming out of the Forest into such enclosed grounds may be killed by the owners of such grounds: and upon these Questions, the Counsel of both parties being there, First, they all held, that a forest may well be in the hands of a Subject, and shall be used as a forest, if the King gives Authority by expresse words for the Administration of Justice there, and for his Justices, to come there: and that if such a grantee might have Commission in such Cases, to use and have Officers of a forest; then it shall continue a forest in the hands of a Subject, otherwise without such liberties it is but a Chase being in the hands of a common person. And Popham said, that he had seen such liberties of forest granted in that manner. Secondly, they all held, that in such forests or chases (being in the hands of a common person) those who are owners of woods may cut them down at their pleasure, without license or view of the Forresters. But yet in such manner as they ought always to leave sufficient bert for the Deer there. Thirdly, they all held, that they may prescribe to have warrens, or to keep Sheep in forests, although they were in the Kings hands. But without a special prescription it cannot be; and in such case of prescription for warren, although it had not been used for divers years, if he had it by grant, or can prove it by prescription a non user is no cause of forfeiture thereof. But Sir Edw. Coke said, it had been adjudged, that the Non user of a Fair or Market, or Courts, or such like liberties wherein the Subjects have interest for their common profit or common Justice, is cause of Seisure of them: but the non user of Parks or Warrens, or such like, which are to the profit only, or pleasure of the owner, is not any cause of their loss or

forfeiture. And he said, it was adjudged about 18. Eliz. in the Case of the Lord Harton, in the Kings Bench, upon Demurrer, that one might well prescribe to cut down his woods in a forest, being in the Kings hands, which Popham affirmed; but said, it was adjudged otherwise about the same time in the Exchequer. Also they held, that if one hath a warren by Charter in all his Manor, he may erect a Lodge, or make Cony-berries in any place of the Manor at his pleasure; but if he claims it by prescription, he ought to make the Cony-berries in such places wherein they have been used, and not in others. Fourthly, they held, that Parks being laid open to forests for forty years, may yet be enclosed again, and they may kill any Deer which come therein. Fifthly, that enclosures cannot be in forests or chases, unless with low hedges which may not disturb the Game. And although enclosures have been continued for forty years together, if they were not before, that they may well be destroyed and laid open, Co. 2. part 155.

Pasch. 5. Jac. Reg's. Coke 12. part fol. 22.

Forests. Chases.

IN this same Term it was informed to the King, that great wrongs were done in his forest of Leicester in the County of Leicester: and in his forest of Bowland in the County of Warwick, &c. parcel of his Dutchy of Lancaster; and upon this by warrant of the King under his Signet, all the Justices were assembled to resolve certain Questions, to be moved concerning the forests, by the Attorney of the Dutchy, and the Counsel of the other part, which were forests and chases; the which being matter in fact, the Judges could not give their resolutions but by way of direction: and it was resolved by them, that if these are forests, it will

appear

appear by matter of Record, as by Eyres of Justices of forests, Swanimotes, Officers of forests, as Reguardors, Agisters, Verderors, &c. but the Appellation of it by the name of a forest in Grants, Offices, and Conveyances, is not any proof that this is a forest in Law.

2. It was resolved by all the Justices, that if these are not other then frée Chases, and no forests in Law, then he who hath any freehold within them, may cut his Timber and Wood growing upon it, without any view or license of any: but if he cut so much that there is not sufficient for Covert, and to maintain the Game of the King, he shall be punished at the suit of the King. And so if a cõmon person hath a Chase in another soil, the owner of the soil cannot destroy all the Covert, but ought to leave sufficient Covert, and sufficient Brouse-wood, as hath been accustomed.

3. It was resolved, that within such a Chase the owner of the soil by prescription may have common for his Sheep, and warren for Conies by grant or prescription: but he cannot surcharge with more then hath been used, then from which, &c. nor make Burrows in other places then hath been used from the time of which, &c. unlesse he hath warren by grant, and then he may use it according to his Grant, but he cannot erect a new warren without Charter.

4. It was resolved, that he who hath such a warren may lawfully build upon his inheritance, within his warren, a convenient Lodge for preservation of his Game.

5. It was said by Popham chief Justice, that it was adjudged in the time of the chief Baron Bell, in the Exchequer, that a man may prescribe to cut his wood upon his own Inheritance, within a forest, although it was against the Act in the 43. Ed. 1. which is in the Abridgment, Title, forest. 21. And this was the Case of Sel-

lenger, for the wood in the forest of Hay, in the County of Hereford: and their reason was for this, that this was but a declaration of the Common Law, and it may be tolled by custom, as Littleton said, vid. 2. Edw. 2. Title Trespasse, fol. 9. in the time of Ed. 1. Trespasse 239. Plowd. Com. Dier, 72. 322. Ed. 4. cap. 7. that the Subject may have a forest: But this intended, if he hath power to have Swanimotes and Justices in Eyre and foresters appendant to his forests.

Consuetudo ex rationabili causa usitata privat communem legem: And it was held by some that this was but an Ordinance, and not an Act of Parliament.

The King against Sir *John Byron* Knight.

J. Bridgman. IN a Quo warranto, for that the defendant for a year past hath used and yet doth use without any warrant, within the Manor of Colswick in the County of Nottingham, within the bounds of the Kings forest of the wood, and within the reguards of the said forest, to have a Park within the said Manor, with a Pale, Hedge, and Ditch inclosed, being two hundred acres of pasture, and a hundred acres of wood within the said Park; Et ad venandum, capiendum, occidendum & asportandum in the said Park, and two hundred acres of pasture, and a hundred acres of wood, omnes & omnimodas damas Domini, &c. foresti suæ prædict. in parcū prædict. & prædict. 200. acr. pase & 100. acr, Bosci aliquo tempore venand. & occidend: Ita quod forestini domini Regis forestæ prædict. nec aliquæ aliæ personæ quæcunq; intromittant' ad venandum, & fugandum intra parcū prædict. & 200. acr. pasc. & 100. acr. bosci sine licentia defendentis.

The defendant pleaded that John Byron Knight, the defendants Grandfather, was seised in fee of a Messuage of

of a hundred acres of land, two hundred acres of Meadow, three hundred acres of pasture, and a hundred acres of wood in Colwick in the County aforesaid, now and time out of mind called the Manor of Colwick, within the meets and bounds of the forest aforesaid. And that the said John Byron the grandfather, and all those whose Estate the said John Byron hath in the aforesaid house, and a hundred acres of land, two hundred of meadow, and three hundred of pasture, and a hundred of wood in Colwick aforesaid, have had, held, and have accustomed to have in the aforesaid, two hundred acres of pasture, and a hundred of wood parcel of the foresaid Tenements, called the Manor of Colwick, belonging to the said Manor of Colwick, enclosing, ditching, and hedging at their will and pleasure, with all liberties, priviledges, and franchises to the said Park belonging, and in the said Park, from the time aforesaid, have used to have and to keep Deer, and from time to time to constitute and appoint a Keeper of the said Deer in the said Park, who from the aforesaid time have used to keep the same, ac ad venandum, fugandum, occidendum, capiendum & asportandum omnes & omnimodas damas in eodem Parco de tempore in tempus existentes ita quod nullus forestarius domini Regis, forestæ prædict. nec aliquæ aliæ personæ quæcunque, intromittantur ad venandum & fugandum in Parco prædict. sine licentia prædicti Johannis, avi. And set forth that the said John the Grandfather died seised, whereby the said Manor, &c. descended to Sir John Byron his Son. And that Hillary 3. Jacobi a fine was levied between Sir Peter Leigh and other plaintiffs, and Sir John Byron the son defendant of the said Tenements, to the use of the said Sir John for life, the remainder to the defendant in tail.

And that the seventeenth of December, 10. Jac. did

set the premises to the defendant for eighty years, if the lessee should so long live, whereby the defendant the 26. Mar. 11: Jac. was and is thereof possessed, and did aver that the Manor of Colwick in the Information, and the said Messuage, a hundred acres of land, two hundred of Meadow, three hundred of pasture, and one hundred of Wood to be the same, & did also aver the life of the lessor.

The Attorney General for the King did reply, that before the information 5c. 9. Oct. 19. Jacobi, and long before, and continuing after until the exhibiting of this information, the defendant, the Park and Tenements aforesaid, with Ditches, Hedges, and Fences had so slightly inclosed, that the Kings Deer of the aforesaid forest, for defect of sufficient inclosing of the Park and Tenements aforesaid, through the default of the defendant did enter, and the Deer of the King into the said Park and Tenements aforesaid, for the cause aforesaid, entring, the defendant did very unjustly kill the said Deer in the said Park and Tenements aforesaid.

The defendant did maintain his War, and traversed without that, that the defendant the Park and Tenements aforesaid, with such slight fences, hedges, and ditches inclosed did keep the same, Quod damæ Regis de foresta prædicta de tempore in tempus intra tempus prædict. in parcum & tenementa prædicta pro def. sufficientis inclusuræ parci & tenementorum prædictor. in def. defend. intraverunt absq; hoc, quod Defendens damas Regis de foresta prædicta in parco & tenementis prædictis pro def. sufficientis inclusuræ parci & tenementorum predict. in defectu defendentis inclusuræ, juste interfecit modo & formâ, pro ut, &c.

Whereupon the Attorney demurred.

And I conceive, saith Bridgeman, that Judgement ought to be given for the King. First, because the plea in War and the Rejoynder made by the defendant is altogether

together insufficient for divers Causes. Secondly, as to matter in Law.

And as to the first, The Quo warranto doth suppose that the defendant did use the liberties there mentioned within the Manor of Colwick, being within the Meets and Bounds of the forest of Sherwood, and within the reguards of the said forest, and the defendant did know this to be within the Meets and Bounds of the said Forest, but does not answer whether it be within the reguards or not, for it may be within the Meets and Bounds of the said forest, and yet not within the reguards, as if the Manor were disforested by Charta forestæ, because it was a Subjects Manor and not the Kings, yet it remains within the meets and bounds of the said forest, but not within the reguards, for now by the disforesting it is made purlieu, and not subject to the reguards and laws of the forest as to the owner of the Manor, Vid. Charta Forestæ, fo. 1. and yet notwithstanding this Statute, if the King had granted this Manor to be free of the Reguards, or out of the Reguards, yet it is still within the Meets and Bounds of the said forest.

Secondly, the defendant makes Title to the liberties whereof Sir John Byron his Grandfather was seised in fee, viz. of a Messuage, a hundred acres of land, two hundred of Meadow, three hundred of pasture, and a hundred of Wood in Colwick, now and time out of mind called the Manor of Colwick, Quodq; ille & omnes illi quoq; statum idem Johannes habuit in tenementis prædict. habuerunt tenuerunt & hered. consuevernnt in prædict. 200 ac. pas. & 100 ac. bos. parcellis prædictor. tenementor. vocat. Manerium de Colwick, spectan'. & pertinent, &c.

So that the defendant doth not prescribe, but doth alledge only that Sir John Byron, and those whose estate

he hath, have used to have a Park, the which is no Title to the Park for that ought to be time out of mind.

Thirdly, the defendant doth claim to have a Park in the aforesaid two hundred acres of pasture, and a hundred acres of wood, whereas there is no speaking of two hundreds acres of pasture before, and therefore he ought to have said, in two hundred acres of pasture parcel of the said three hundred acres.

Fourthly, the defendant doth not answer to the killing of the Kings Deer of the forest, but doth only justifie the killing of all Deer time out of mind, being in the said Park.

Fifthly, the Rejoynder is a manifest departure from the War, for in the War he claimeth to have a Park ditched and hedged, per voluntatem eorum inclusum, so that by this pretence he may keep the Park with such low hedges as he will, and yet in his Rejoynder he doth traverse, absque hoc, that he kept the Park adeo parvis sepibus & fossis it is, quòd damæ Regis de foresta prædicta in parcum prædict. pro def. ineluſuræ intraverunt, & absque hoc, &c. So that the defendant by his Rejoynder doth make an issue upon that which he doth justifie in his War, and doth, upon the matter deny in his rejoynder, the matter alledged by him in his War.

And, as to the matter in law, I conceive that the defendant cannot prescribe to have a Park in such manner as he pretendeth, for that such prescription is quite contrary to the nature of his Royal franchise of his forest, and it is to the destruction of it, for a forest is a Royal franchise, so that regularly none can have it but the King, as it was adjudged in this Court in a Quo warranto against Humphrey Biggs and Manwood, f. 1. A forest is a certain Territory of ground priviledged for wild beasts and fowls of the forest to rest and abide in the

safe

safe protection of the King, for his princely delight and pleasure, and doth consist of four things. 1. Vert. 2. Venison. 3. Particular Laws and Priviledges. 4. Certain Officers.

But by this pretence of the defendant, the forest of the King is priviledged for wild beasts to rest in protection of the King, but they are subject to being destroyed by the defendant, for by such pretence none can enter there but he or his Keepers. And I conceive that no body can pretend to have any profit or pleasure in the forest, which tends to the destruction of the forest, and that is the reason that one cannot prescribe to have common in a forest, for Sheep, Geese, Goats, or Hogs, for to suffer them to common there, is ad magnum nocumentum ferarum forestæ: and such a prescription the defendant maketh, which is not only ad magnum nocumentum, but to the utter destruction of the forest: and if it be objected, that this Park claimed by the defendant is but a little part of the forest, this is no answer; for as in the Case of a Common, no man may prescribe to have Sheep, &c. in the forest, so cannot be in any part of the forest; and if the defendant may prescribe to have such an irregular Park in part of the forest, so may others claim such like prescriptions in other parts of the forest, and so the King shall lose all the franchise of his forest, and the defendant may make his fence or ditch so low without side, and so high within, that the Kings Deer cannot get out again when they are come in, and so this Park shall be in the nature of a Trap to catch the Kings Deer.

And further, he that will prescribe to have any common, profit or pleasure in the freehold or inheritance of another, ought to make his prescription in such manner, so that he must leave the residue of the profits to the owner, and cannot utterly exclude the owner, and there-

therefore if one doth prescribe to have all the herbage, pannage, and profits of the land of J. S. no man can conceive that this prescription is good. Neither can a Commoner prescribe that the Lord of the soil cannot put in any Cattle into the land; but in our Case the very franchise of the Kings forest doth consist of Vert, Venison, Lands, and Officers of the Forest, for the King may have a forest, although he hath no land there.

And in the Commentaries 332. If a Manor within the forest of Waltham do escheat to the King, and the King grants the Manor to one in fee, yet shall not he have the liberty of the forest; and the same law is where the King grants all the land which he hath in the forest.

But notwithstanding I agree that one may have a Park within a forest by prescription or by grant, but then the same ought to be kept so inclosed, that the beasts of the forest cannot enter into the Park, which if not done, it is a forfeiture of the liberty of the Park, and so it is if he have a Saltery, or Deer-leap, for the nature of a Park is to be inclosed, and in the 10. H. 7. 6. it is said, that a Park consists in Soil, Inclosures, and Game, and in the 15. Ed. 3. Thomas Earl of Lancaster, Lord of a forest, did grant leave to one John Harrington to make a Park within the said forest, and there it is adjudged, that if Grantee does so slightly inclose the Park, so that the forest beasts may get in there, that it is a forfeiture, and the Lord of the forest may enter and take the Deer.

But by pretence of the defendant, the King shall not have so much power in this land, being in the midst of the forest, as he hath in the lands of any of his Subjects which do lye without the forest: for if forest beasts stray or wander into the land of a Subject, out of the forest,

foreſt, the Foreſters may enter into this land, and rechaſe them into the foreſt again.

CHAP. IV.

1. *Which are beaſts of Foreſt, or, beaſts of venery.*
2. *Which are beaſts of Chaſe.*
3. *Which are beaſts and fowls of Warren.*
4. *The difference between the beaſts of the Foreſt, and the beaſts of Chaſe.*
5. *Of their ſeveral proper names, ſeaſons, degrees, and ages.*
6. *Of the apt and meet terms of Hunting, appertaining both to beaſts of Venery and Chaſe.*
7. *Of the antiquity of Hunting, and Chaſing of wild beaſts.*

1. Which are beaſts of Foreſt, or, beaſts of Venery.

THe old written book, called Antiquitas Britaniæ, which was written before the Conqueſt, ſaith, that there be five wild beaſts of benery, that are called beaſts of foreſt, and there they are eſpecially ſet down to be theſe, the Hart, the Hind, the Hare, the Boar, and the Wolfe. Hollinſhed in his deſcription of England ſaith, That the beaſts of benery or foreſt, are theſe, the Hart, the Hind, the Hare, the Boar, and the Wolfe: and even according to the ſame, the antient book of St. Albans, written by a Monke, of Hunting and Hawking, ſaith, that thoſe foreſaid five beaſts by name, are the beaſts of the foreſt or of benery, and none other: and old Sir Triſtram in his worthy treatiſe of Hunting ſaith, that the Hart, the Hind, the Hare, the Boar,

Antiquitas Britaniæ, f. 43.

Hollinſh. in his deſcription of England, pa. 2. c. 6. b. 30.

The book of S. Albans, f. 30.

Sir Triſtram, in his treatiſe of Hunting.

Boar, and the Wolfe, they only are the beasts of forest, which the old foresters or woodmen were wont to call beasts of venery. Also Budæus in his second book De Philologia, treating there of the nature of divers wild beasts, saith, that the Hart, the Hind, the Hare, the Boar, and the Wolfe, Semper Forestiæ & veneris habentur bestiæ, these, saith he, are always accompted beasts of venery and beasts of forest: with this agreeth M. Serjeant Fleetwood in his brief collection of certain notes of forest Laws: with this agreeth Master Hesket in his learned reading upon Charta de foresta, so that by these authorities we may plainly see, what wild beasts, are, and have been accompted properly beasts of forest, or beasts of venery.

Budæus in lib. 2. de philologia.

Mr. Serjeant Fleetwood, fo. 3.

Mr. Bartholomew Hesket in his reading, f. 20

And whereas they say, the Hart, and the Hind, being both beasts of one kind, and yet they do accompt them for two several beasts: it seemeth, that is because that although they be both of one kind, yet they are beasts of several seasons; for the Hart hath his season in Summer, and the season of the Hind doth begin when the season of the Hart doth end. And whereas they say, the Hart, they do thereby understand, as well the Stag, Staggerd, and every other male Deer of that sort, as the Hart that is a Hart indeed: And whereas they do accompt the Wolfe for a wild beast of the forest, and yet we have not any in England, it is to be understood, that, although here are no Wolves in England at this day, yet here have been plenty of them, and they have been accompted beasts of venery or forests, and Kings and Princes have greatly delighted in the hunting of them. Wolves were almost all destroyed by King Edgar, so that when Canutus the Dane came to be King here in England, foxes and wolves were greatly in contempt amongst the greatest sort of people, for the harm that they had done, and therefore Canutus in his forest Laws,

Co. Inst. 3 16.

Laws, that he did ſet down, he did not accompt the Wolfe for a beaſt of the foreſt, nor a fore for a beaſt of the chaſe, as it doth appear in his charter of the foreſt, Canon 27. Where he ſaith, vulpes & lupi nec foreſtæ nec veneris habentur, & proinde eorum interfectio nulli emendationi ſubjacet; ſi tamen infra limites occiduntur, factio ſit Regalis Chaſeæ, & mitiùs emendetur. Which is, fores nor wolves are not accompted beaſts of venery nor of foreſt, and therefore the killing of them ſhall not yield any Recompence, and yet for all that, if they be killed within the limits and bounds of the foreſt, then the killing of them is a breach of the Kings Royal free chaſe, and for that the offendor ſhall yeeld a recompence: ſo that, although Canutus did not accompt the wolfe for a beaſt of the foreſt, nor the fox for a beaſt of the chaſe, yet it ſeemeth by this, that they are priviledged in the foreſt, and therefore no man may hunt or kill them. And by this you may note, that every foreſt doth contain a Chaſe within it, which Chaſe is called Chaſe Royal or a Royal Chaſe, but yet, although that Canutus did no more regard wolves and fores, becauſe they were beaſts of raven, and harmful to the people, and commonweale, yet all the antient woodmen and foreſters do accompt the wolfe a beaſt of venery and foreſt, and the fox a beaſt of chaſe, for the eſtimation that Kings and Princes have had of them, and for the noble paſtime in the hunting and chaſing of them. Canutus, Canon 27. Iſidorus l. 12.

A Hart is called Cervus in Latin, and Iſidorus in his 12. book ſaith, that he is called Cervus of the Greek word Cereſton, which is a horn, he is accompted of divers writers to be the moſt ſtateliеſt beaſt in his gate that doth go upon the earth, for he doth carry a majeſty in his countenance and gate. Bartholomeus de proprietatibus rerum, fol. 357.

Budæus in his ſecond book de Philologia writeth thus of Harts, Exuvias illas anniverſarias, quibus orbati, latent cervi, Budæus 2. lib. philologiæ.

cervi, quasi honore atque insigni amisso, non Cornua, ut Latini, sed caput, quasi decus ferinum, appellant venatores: The Harts having mewed their heads, being disarmed, as though their honours and ensigns were lost, they hide themselves in coberts, foresters or hunters do call that the peerly mewing of their heads, as the beauty of their wildnesse, not of their horns, as the Latinists do call it.

2. Which are beasts of Chase.

Antiquitas Britanniæ f. 43.

THe aforesaid written book, called Antiquitas Britanniæ, saith that there are 5. wild beasts, that are called beasts of Chase, the Buck, the Doe, the For, the Martron, and the Roe. Hollinshed in his description of England saith, that the Buck, the Doe, the For, the Martron, and the Roe, are only the beasts of Chase: The book of St. Albans saith, that there are certain beasts, which are called beasts of Chase, which do differ from the beasts of the forest, which beasts of the Chase, saith he, are these, the Buck, the Doe, the for, the Martron, and the Roe: And with all these, old Sir Tristram, an antient forester, in his worthy treatise of Hunting, doth agree: And with this agreeth Budæus in his book De Philologia: and last of all, Mr. Serjeant Fleetwood in his brief collection of notes of forest Laws, doth affirm that the beasts of Chase are only, the Buck, the Do, the for, the Martron, and the Roe.

Hollinshed in his description of England, pa. 206. b. 30.

The book of St. Albans, f. 30.

Sir Tristram in his treatise of Hunting.

Budæus in 2. libro Philologiæ.

Mr. Serjeant Fleetwood.

3. Which are beasts and fowls of Warren.

There be both beasts and fowls of the Warren, beasts as hares, Conies and Roes: fowls of two sort, terrestres (and they of two sorts, silvestres & campestres. 1. Phesant, Woodcock, &c. 2. Partridge, Quail, Rail, &c.) 3. Aquatiles, as Mallard, Hern, &c. Co. Lit. 233.

THe beasts and fowls of Warren are these, the Hare, the Cony, the Phesant, and the Partridge, and none other are accompted beasts nor fowls of war-

ren,

ren, as it doth appear in the Register of Writs, in an action of Trespasse, Quare vi & armis in liberam warrennam ipsius A. apud B intravit, & in ea sine licentia & voluntate sua fugavit Lepores, Cuniculos, Phasianos & perdices cepit & asportavit, &c. By which we may learn, that there are only two beasts of warren, the Hare, and the Cony, and but two fowls of warren, the Phesant, and the Partridge. The Register is full of such like presidents, and in every writ of trespasse in the Register, brought against any offendors in a free warren, all the beasts and fowls, which are beasts and fowls of warren, are there named in this sort, Et Lepores, Cuniculos, Phasianos & perdices, cepit & asportavit. And with this agreeth the book of Entres, in an action of Trespasse brought against a Hunter in a mans warren, where the words are, Quare vi & armis liberam warrennam ipsius I. A. apud N. intravit & sine licentia & voluntate sua fugavit, & lepores, cuniculos, Phasianos, & perdices, cepit & asportavit, &c. Whereby it doth manifestly appear, which are beasts of warren and fowls of warren: Also Master Fitzherbert in his Natura brevium, fol. 86. & 87. where he, shewing a difference between hunting in a thing close or soil, and in a warren, setteth down the beasts and fowls of warren to be, the Hare, the Cony, the Phesant, and the Partridge; and if any man have the liberty of a free warren, by charter or grant from the King, the words of the grant are usually, quòd ipse, & heredes sui, habeant liberam warrenam in omnibus dominicis terris suis in N. in comitatu B. dum tamen feræ illæ non sint infra metas forestæ nostræ, ita quod nullus intret terras illas, ad fugandum in eis, vel aliquod capiend', quod ad warrennam pertinet; so that, every charter of a free warren were altogether uncertain by those words, quod ad warrennam pertinet, if it were not certainly known, what were beasts and fowls

In Registro brevium, f. 93. b. in brevi de transgressione.

Vide ibidem fol. 69. b. In libro Intrationis, fol. 585. In titulo Tr. in Hunting. 2.3. M.3.H.6.fo.22. b.15. H.34.H.6.fol. 28.a.9 p.35 H. 6. fo.43.a 3. Fitz.nat.br.fol. 86.87.

Secretum domini abbatis Glaston, 81. b.

ſowls of warren; and therefore the Regiſter, as a perfect example for every man to frame a writ of treſpaſſe by, for hunting in a warren doth aver the treſpaſſe by the offendor in the warren, in taking or driving away of thoſe beaſts and fowls, that are beaſts and fowls of warren. And it ſeemeth by the opinion of Budæus, that the beaſts and fowls of warren are ſuch as may be taken with long-winged Hawks, or Hawks of prey, which are, the Hare, the Cony, the Pheſant, and the Partridge: for a warren is but a place priviledged for beaſts, and fowls of warren onely, and for no more; and thus much concerning beaſts, and fowls of warren.

Budæus in 2. libr. philologiæ.

4. The difference between the beaſts of the Foreſt, and the beaſts of Chaſe.

As there is a great difference betwéen a forreſt, and a chaſe, ſo there is ſaid to be as great difference betwéen the beaſts of the forreſt, and the beaſts of the chaſe: the beaſts of the forreſt, they are, tantùm ſilveſtres: and the beaſts of the chaſe are, campeſtres tantùm. For the beaſts of the forreſt do make their abode, all the day time, in the great coberts and ſecret places in the woods: And in the night ſeaſon they do repair into the lawnes, meadowes, paſtures, and pleaſant feedings, for their food and relief. And therefore they are called Silveſters, that is to ſay, beaſts of the wood, or beaſts that do haunt the woods more then the plains, according as the Prophet David ſaith, in his 104. Pſal. Thou makeſt darkneſſe that it may be night, wherein all the beaſts of the foreſt do move; the Lyons roaring after their prey do ſeek their meat of God, the ſun ariſeth and they get them away together, and lay them down in their dens. And ſo the beaſts of the forreſt are only thoſe, that

M. Heſket, fo. 8. & 11. M. Treherne, fol. 9.

Pſal. 104. verſ. 20.

that do kéep the coverts, which are called beaſts of venery. And the beaſts of Chaſe, they do make their abode, all the day time, in the fields, and upon the hils, or high mountains, where they may ſée round about them a far off, who doth ſtir or come néer them: and in the night ſeaſon, when every body is at reſt, and all is quiet, then they do repair unto the corn-fields and vallies below, where the lawnes, meadows, and pleaſant féedings are for their food and reliefe, and therefore they are called Campeſtres, that is to ſay, beaſts of the field, or beeſts that do haunt the fields, more then the woods. M. Hesket in his reading, f. 11.

It doth appear by the Prophet David, in the 50. Pſalm, that as there are ſome wild beaſts, that do kéep the woods and coverts: ſo there are ſome wild beaſts that do kéep the fields, the mountains, and the hils, which are the beaſts of Chaſe: for the Prophet David ſaith, I will take no bullock out of thy houſe, nor he-goats out of thy folds, for all the beaſts of the foreſt are mine, and ſo are the cattel upon a thouſand hils: And again he ſaith, I know all the fowls upon the mountains, and the wild beaſts of the fields are mine, and ſo there the Foreſt, and the wild beaſts of the field: And Budæus ſaith, that thoſe wild beaſts that do haunt the fields and the hills, which are the beaſts aforeſaid, they, ſaith he, are the beaſts of Chaſe. Pſal. 50. verſ. 9. 10. Pſal. 50. verſ. 11. Budæus in 2. libro de Philologia.

5. Of their ſeveral proper names, ſeaſons, degrees, and ages.

AND now here it is neceſſary to ſpeak ſomething of the proper names of the foreſaid beaſts of Foreſt, Chaſe, and Warren, to the end that men may know how to call them, according as they are called and ter-

med by the antient Foresters and Woodmen. And because of all other beasts of venery, the Hart is the most noblest, and the most worthiest beast, and taketh the first place, I will first begin and speak of the terms belonging to him: And therefore you shall understand, that at,

Sir Tristram. The book of S. Albans.

The first yeer, you shall call him, a Hind calf, or a calf.
The second yeer, you shall call him, a Broket.
The third yeer, you shall call him, a Spayad.
Budæus. The fourth yeer, you shall call him, a Staggard.
The fifth yeer, you shall call him, a Stag.
The sixth yeer, you shall call him, a Hart.

But here note, that some antient Writers do report, that in times past the Foresters and Woodmen were wont to call him a Stag at the fourth yeer, and not a Staggard, as we now do: And also at the fifth yeer they did call him a great Stag: And so they were wont to give him a difference by this word, Stag, and great Stag: And whereas some do think that a Stag, of what age soeber he be, shall not be called a Hart, untill the King or Queen do hunt him, that is not so, for they are all greatly deceived that so do think; for after the fifth yeer of his age he shall no more be called a Stag, but a Hart. And as Budæus saith, at six yeers of age, then a Hart you shall him call; so that if a Stag come to be six yeers of age, then he is a Hart: But if the King or Queen do hunt or chase him, and he escape away alive, then after such a hunting or chasing, he is called a Hart Royal. But if the King or Queen do hunt or chase a Hart in the Forest, which by chasing is driven out of the Forest, so far, that he is not likely to return to the forest again of himself, and the King giveth him over, either for that he leaveth off from hunting, as being weary, or, for that he cannot recover him, and because that such a Hart hath shewed the King pastime

Sir Tristram.

Budæus in 2. libro de philologia.

for:

for his delight, and is also, as Budæus saith, Eximius Cervus, a goodly Hart; and therefore the King would have him preserved to return to the Forest again, He doth cause open proclamation to be made in all Towns and Villages nere unto the place where the same Hart is so remaining, that no manner of person or persons shall kill, hurt, hunt, or chase him, but that he shall safely return to such a Forest again from whence he came, and for that cause the King doth appoint certain Foresters to harbor the said Hart there, for a while, and by degrées to bring him into the forest againe, and then ever after, such a Hart is called a Hart Royall proclaimed: so note, that there are three sorts of Harts.

A Hart.
A Hart Royal:
A Hart Royal proclaimed.

I have seen divers antient Records remaining in Nottingham Castle in the Tower, wherein the Court is usually kept for Peveril see, which are in a manner defaced and hardly to be read by bad keeping of them; out of which Records, I did take out certain notes concerning forest matters, amongst which notes I found one: That in anno domini 1194. King Richard the First, being a hunting in the forest of Sherwood, did chase a Hart out of the forest of Sherwood into Barnesdale in Yorkshire, and because he could not there recover him, he made proclamation at Tickill in Yorkshire, and at divers other places there, that no person should kill, hurt or chase, the said Hart, but that he might safely return into the forest again, which Hart was afterwards called a Hart royal proclaimed: By this I do gather, that a Hart is not proclaimed a Hart, but when he is hunted out of some forest or chase by the King, and they, because the King hath hunted him out of the forest, and

cannot recover him, but is forced to leave him in danger to be hunted and killed there by others, then the King doth proclaim him a peace where he is: which is but only for his safe return to the forest again, for otherwise I do see no reason, why he should have a peace proclaimed being within the forest, for there he is in a Sanctuary of peace. And it seemeth by the case in 21. of King Henry the Seventh, where a man was indicted for killing a Hart proclaimed, which Indictment was challenged, for that it was not shewed, where, nor in what place, the proclamation was made, that the same Hart was proclaimed a Hart by some such means, and in some such solemn manner, as the other Hart aforesaid was, and then such a Hart, so proclaimed, is a Hart royal proclaimed,

21. H. 7 fol. 30. pla. 7. 12. H 8. fol. 9. pl. 2. fo. 9. 10. per Brook. 7. H. 6. fo. 36. pla 41.

Canutus, Canon 24. The antient Charter of the Forest of Canutus, doth call the Hart, Fera regalis, a royal wild beast, or a Hart royal.

The Book of S. Albans, f. 30. As for the Hind, there needeth little to be said of her, only this: That a Hind is called, at,

The first year, a Calf.
The second year, a Brokets sister.
The third year, she is a Hind.

Of some old Foresters the Hare is called the King of all beasts of Venery, and in hunting maketh best sport, and delight, there is small variety of terms for the Hare, more then this: A Hare is called

The first year, a Leveret.
The second year, a Hare.
The third year, a great Hare.

The Book of S. Albans, f. 30. Amongst the beasts of Venery, the fourth, and next in degree unto the Hare, is the Wild Boar, and he is called and termed after this manner:

The first year he is, a Pig of the sounder.
The second year he is, a Hog.

The

The third yéer he is, a Hogſtear.
The fourth yeer he is, a Boar:
for then after the fourth yeer, if not before, he departeth from the Sounder, and then you ſhall call him, a Singler, or rather, Sanglier.

The laſt and fifth beaſt of Venery or of Foreſt, is the Wolfe, which, becauſe we have none here in England, nor I think we never ſhall have in any of our Foreſts, I will not ſpeak any thing of their different names.

Concerning beaſts of Chaſe, whereof the Buck, being the firſt, is called, as followeth:

The firſt yeer, a Fawn.
The ſecond yeer, a Pricket.
The third yeer, a Sorel.
The fourth yeer, a Sore.
The fifth yeer, a Buck of the firſt head.
The ſixth yeer, a Buck, or, a great Buck.

The next after the Buck, is the Doe, being accompted the ſecond beaſt of Chaſe, which is called, as hereafter followeth:

The firſt yeer, a Fawn:
The ſecond yeer, a Prickets ſiſter.
The third yeer, a Doe.

The third beaſt of Chaſe, is the Fox; and albeit that the Fox is ſaid to have great plenty of policy and devices, yet there is very little variety in the terms of Foxes: for a Fox is called:

The firſt yeer, a Cub. Sir Triſtram.
The ſecond yeer, a Fox.

and ſo, ſtill afterwards they are called Foxes, without any other difference, more then an old Fox, or, ſuch like, and alſo a Litter of Cubs.

The Martern, or, Martron, as ſome old Foreſters, or woodmen, do call them, being the fourth beaſt of Chaſe,

whereof we have no great ſtore in theſe Foreſts on this ſide Trent, but yet in the County of Weſtmerland in Marrendale, there are many: The terms of the Martern or Martron are theſe; The Martern is called,

The firſt yeer, a Martern Cub.

The ſecond yeer he is called a Martern.

Alſo the Foreſters do call a company of Marterns, a Richeſſe of Marterns.

The fifth and the laſt beaſt of Chaſe, is the Roe, whoſe proper terms appertaining to Chaſe are theſe: that is to ſay, a Roe is called, the firſt yeer, a Kid.

The ſecond yeer, a Gyrle.

The third yeer, a Hemuſe.

The fourth yeer, a Roebuck of the firſt head.

The fifth yeer, a fair Roebuck.

As for the beaſts of warren, the Hare hath been ſhewed already before.

The Cony is called, the firſt yeer, a Rabet, and afterwards, an old Cony.

The ſeaſons of theſe beaſts are, as followeth.

The time of grace of a Hart, or Buck, beginneth at Midſomerday, and laſteth till Holy-Rood day.

The ſeaſon of the Fox beginneth at the Nativity of Chriſt, & laſteth untill the Annunciation of our Lady.

The ſeaſon of the Hind, or Doe, doth begin a Holy-Rood day, and laſteth till Candlemas.

The ſeaſon of the Roebuck beginneth at Eaſter, and laſteth till Michaelmas.

The ſeaſon of the Roe beginneth at Michaelmas, and laſteth until Candelmas.

The ſeaſon and hunting of the Hare beginneth at Michaelmas, and laſteth till Midſomer.

The ſeaſon of the Wolfe, is ſaid to be from Chriſtmas till the Annunciation of our Lady.

The

The ſeaſon of the Boar is from the Nativity of Chriſt, till the Purification of our Lady.

6. Of the apt and meet terms of Hunting, appertaining both to beaſts of Venery, and Chaſe.

Foreſters and good Woodmen do uſe to ſay:

A herd of Harts.
A herd of all manner of Deer.
A heby of Roes.
A ſoundor of Swine.
A rout of Wolves.
A richeſſe of Marternes.
A brace of Buckes, or a leaſe of Bucks.
A brace of Foxes, or a leaſe of Foxes.
A brace of Hares, or a leaſe of Hares.
A couple of Rabets, or a couple of Conies.
A Hart harboreth.
A Buck lodgeth.
A Roe beddeth.
A Hare ſeated, or ſormed.
A Cony ſitteth.
A Fox kenneleth.

A litter of Cubs.
A neſt of Rabets.

You ſhall ſay

The Deer is broken.
The Fox is caſed.
The Hare is caſed.

You ſhall ſay

Diſlodge the Buck:
Start the Hare.
Unkennel the Fox:

Rouse the Hart.
Bouit the Cony.

You shall say

A Hart bellowoth.
A Buck grouneth.
A Roe belleth.
A Boar freameth.
A Hare, or a Cony beateth or tappeth.
A Fox barketh.
A Wolfe howleth.

You may say

A Hart, or a Buck goeth to rut.
A Roe goeth to his turn.
A Boar goeth to the byimme.
A Hare and Cony to the buck.
A Fox to clicketting.
A Wolfe goeth to match, or to his make.

The Fat of all kind of Deer is called Sewet, and it may be very well said also to say: This Deer was an high Deer of grease. The Fat of the Boar, and the Hare, is called grease.

The Book of S. Albans.

The Fat of the Roe only is called Weby grease.

And this is a thing highly to be observed, that the ordure of every beast of Chase and Venery hath his proper term: the reason is, because that their ordure and excrements are one principal mark, whereby the good Foresters and Woodmen do know the place of their feed, and also their estate: So that a Forester or Woodman, in talk, or in making of his reports, shall be often constrained to rehearse the same: And therefore you shall understand, that of an Hart, and of all Deer, the ordure is called fewmets, or fewmishing: Of a Hare crottels or cratifling: Of a Boar, the lesses: Of a Fox and all other vermin, the fyants.

Old Sir Tristram.

The

The Terms of the treading, or footing, of all beaſts of Venery and Chaſe, are as followeth.

Of a Hart, the Slot.
Of a Buck, and all other ſallow Deer, the view.
Of a Boar, the tract or treading.
Of a Hare, diverſly, for when ſhe is in plain fields, ſhe forets: when ſhe chaſeth about to deceive the hounds, then ſhe doubleth: when ſhe beateth a hard high way, where you may yet find and perceive her footing, there ſhe pricketh: Alſo in time of ſnow, we ſay, the trace of an Hare.
Of a Fox, and all other Vermine, the footing.

The terms of the Tail.

Of a Hart, the tail.
Of a Buck, Roe, or, any other Deer, the ſingle.
Of a Boar, the wreath.
Of a Fox, his buſh, or holy water ſprinckle.
Of a Wolfe, his ſtearn.
Of the Hare and Cony, the ſcut.

When a Hart is paſt his fifth year, he is generally to be called a Hart of Ten, and afterwards according to the increaſe of his head, whether he be crocked, palmed, or crowned. When he breaketh herd, and draweth to the thickets, or coverts, the Foreſters and Woodmen do ſay, he taketh his hold.

Good Foreſters and skilfull Woodmen, in beaſts of venery and chaſe, do call the round roll of the horn, that is next to the head of the Hart, the Bur: The main horn it ſelf, they call the Beam: the loweſt antlier, is called the Bow antlier, or Beas antlier: the next, Royals: the next above that, Surroial: and then the Top. In a Buck

Buck they say, Bur, Beam, Branch, Advancers, Palm, and Spellers.

7. Of the Antiquity of Hunting and Chasing of wild beasts.

IT doth appear, even by the holy Scripture, that hunting and chasing of wild beasts hath been used and taken for a pastime and recreation and great delight, almost from the beginning of the world. We read in the 25. of Genesis, that Esau became a cunning hunter: that is to say, a man that was expert in chasing and hunting of wild beasts. We read in the 16. of Jeremy, where the Prophet threatneth the wicked, that God will send hunters to hunt them from the hills, and the mountains, and from the caves, wherein they were. And likewise we read in the 10. of Genesis, that Nimrod grew great upon the earth, and that he became a mighty hunter. And again, we read in the 25. of Genesis, that Isaac loved Esau, because he did eat of his Venison. We read in the 27. of Genesis, that Isaac being old, commanded his son Esau to take his bow and his arrows, and to get him to the fields, and to take him some Venison, to make him meat that he loved. We read in the first book of Kings, that Solomon had allowed him every day for his kingly diet, certain Harts and Bucks for venison. All which places do prove the antiquity of hunting to be great. Hunting in Forests, Chases, and such like priviledged places of pleasure, is only for Kings, Princes, and great worthy personages, and not for mean men of mean calling or condition: But they may hunt and kill wild beasts in some sort, when they can take them in their wildness, being far off from any Forest, Chase, or Purlieus, and some men may in some sort kill them in the purlieus.

Gen. cap. 25.

Jeremy 16. vers. 16.

Gen. cap. 10.

Gen. 25.

Gen. 27.

1 Book of Kings cap. 4.

Action

8. Of the Property that the King hath in the Beaſts of the Foreſt.

Action de Treſpas ſuit port de Cloſe debuiſe, &c. le def. dit que le lieu on le travers eſt ſuppoſe eſt un lieu appell B. adjoynant al foreſt le Roy appell G, & alleage coment un G. eſt foreſter de meſme le foreſt, & alleage preſcription en luy ſes anceſtors, & monſtra coment le plaintiff & tout ceux que eſtate il ad en lieu adjoynant al foreſt ount uſe denpale contigue verſus meſme le foreſt, & monſtre coment per default de impalement 4. Deer eſcapont hors del foreſt, en meſme le lieu ſon le def. ad ſuppoſe, &c. & le defendant come ſervant a meſme Ceſtuy G. & per ſon commandement eux purſue & rechace eux dems le foreſt areremaine, le quel eſt meſme le treſpas.

¶ Conisby, Le plea neſt bon, Car coment que default fuit en le plaintiff que il en d'impale my envers le foreſt le quel ſuit un tort fait al Roy, d'ont le Roy poit luy puniſh, mes n'eſt reaſon que le def. fare auter tort al plaintiff, nient obſtant que le pl. fait tort al Roy purle non cloſure, &c.

¶ Frowike, è contra, Et moy ſemble que le plea eſt bon, Car le default ſuit en le pl. que les ſavages beſtes eſcape en meſme le lieu ſur le non cloſure, donques eſt reaſon que le Foreſter purra purſue & rechace eux areremain, Car le pl. ne poit reteigner les beſtes la, pur ceo que ſuit ſon default que ils viend. la, Car ſi le pl. uſt priſe aſcun ſavage beaſt dems le foreſt, le foreſter pueroit aver priſe meſme le beaſt de luy, & per meſme le reaſon quant ils viend. en le terre le pl. en ſon default, come ſi le pl. chaſe les ſavages, & eux miſe en ſon le hors del foreſt, uſt eſte loyal de purſuer eux, & eux de repriſer per le foreſter, & iſſint icy, & ieo entende nul difference perenters avers & les beſtes ſavages, mes ſi les avers averont reigne en le terre le pl. pur default d'encloſuer, il uſt eſte loyal pur ceſtuy que avoit intereſt de eux purſuer & repriſer, per que, &c.

¶ Noble,

¶ Keble, a meſme lentent. Car home en Parks & Warrens ad intereſt en les beſtes, & pur ceo home recon. & avera action pur cunicles & fowels priſes, en ſon warren: Et en rivers home aucun action de treſp. de Piſcher la, & ſil priſt piſches le party que ad le eure poit eux repriſe, & uncore ils de nature ſont ſav ges, & iſſint coment que les beſtes ſont ſavages; auxy bien come ils ſont en le foreſt, le Roy ad intereſt, mes ſi ils eſcapont hors, don ques il nad eſcun intereſt en eux, & ſi le defendant uſt priſe eux deins le foreſt, & avera meſne eux en auter terre, le foreſter purroit bien eux repriſer de luy, donques tout eſt un lon il rempale le lieu, iſſint que per ceſt default ils veneront en le rerre le pl. que ore le foreſter, on un perſon Commandement purroit purſuer & eux repriſe, car ceo eſt merement le default le pl. quia ils viend. en ſon terre, & donques auxy fort en le ley come le party avois miſe eux en meſme le lieu luy meſme, per que, &c. Auxy, Keble dit que home ne poit forſtaller les ſavages en terre que eſt adjoynent al foreſt, quant ils viendront hors del foreſt, quod Mordant negavit, except que ceo lieu eſt deins les bounder del foreſt, &c.

¶ Wood, moy ſemble le plea eſt bon pur le cauſe rehearſe, & que le default commence en le pl. meſme de non paler, le quel done le foreſter authority de repriſer eux hors de ſon terre: Come home ad un park, & ſavages beſtes, & un auter debruſe le pale, & les ſavages eſcaperont hors del park per ceo en le terre de luy que debruſe, il eſt loyal pur le parker ou pur ceſty que ad le park dent. & repriſe les beſtes, & iſſint icy, quod Vatiſour affirmavit, pur ceo que le default fuit en le plaintiff pur non paler, Et il ſemble que per meſme le reaſon que ſils fueront avers domeſtes & eſcapont per le default le plaintiff, que le party porra purſue & poit preigne ceux beſtes.

¶ Davers, e contra, Car il eſt plede que le plaintiff ad uſe dempaler ſon terre demeſne verſus le foreſt, le quel ne

ferra

ferra matter coment que ceo pale ne ſoit bien fait, Coment que les beſtes eſcapont, uncore le foreſter ne poit eux repriſer & eux purſuer, car le pale poit eſtre en ſon terre demeſne un hige de foreſt, en quel caſe devant que ils viend. al pale, ne liſt al foreſter de eux purſuer, car ils fueront en le terre le plaintiff, ou auter home devant que il demendr. al lieu on, &c. pur aſcun choſe que eſt monſtre del part le defendant per ſon plea, pur ceo que neſt alleage que le pale joyne al foreſt, & nul terre enter eux ne que le pale eſt fait ſur le terre le foreſt.

¶ Brian, le plea eſt bon quant a ceo, car le plea eſt que le pale eſt contig. al foreſt, & iſſint eſt alleage que nul terre eſt pre enter le terre & le foreſt, Car ſil ne fuit iſſint alleage, le pleder ne fuit bon, &c. Mes moy ſemble que nient obſtant que le default eſt en le pl. pur non paler, uncore eſt loyal pur le foreſter on aſcun home de eux priſer dehors, Car nul property eſt en le Roy, ne le Roy, ne le foreſter poient a medler oueſque eux en auter terre, iſſint pur ceo que nul property eſt en le Roy, le foreſter ne poit enter pur eux aver de hors, Car il nad nul property en eux, ne le Roy, & donques ſi ſoit iſſint, le purſuit del defendant eſt fait torcious, Car neſt ſemble les avers domeſt, Car la property remaine, & pur ceo il que ad property poit eux viender, entant que le default eſt en le plaintiff pur non cloſer: Mes auter eſt des beſtes ſavages, car jeo e tende ſi home debruſe le pale dun park, iſſint que les beſtes vaont hors del park, nul purſuit eſte aut: fait pur eux en le terre ceſty que debruſe le pale, pur ceo que nul property eſt en ceſtuy que eſt owner del Park, mes il aver ſon remedy per action de parco fracto, Sir leſtat. fail ſur ceo per que, &c: *Kelway*, 30.

CHAP.

CHAP. V.

1. *What is Venison:*
2. *Of the general signification of Venison.*
3. *Of the special signification thereof.*
4. *Whereof the same receiveth the name of Venison.*

1. What is Venison.

EVery Forest hath two ornaments that doth grace and decorate the same, and which are as it were the only beauty of a Forest, and the want of either of them doth in short time not only deface and blemish a Forest, but also make a Forest to be no Forest at all. The first of which ornaments is called Vert, and the second is called Venison: and although that Vert habe always the first place, and is set before Venison, amongst the Canons of the Forest Laws, yet because in the former Chapter and Treatise I habe already treated of beasts of Venery, Chase, and warren, it is now most necessary, that I do proceed next with Venison, and then next after it, with Vert: And therefore you shall understand, that even as the old Forresters and good Woodmen, do by this general term, Beasts of venery, understand every beast of forest: Even so, they do likewise by this general word Venison, understand every beast of Forest and Chase, as a word of art proper to beasts of Forest, and beasts of Chase, and to none other. And therefore by this word Venison, it is to be understood, that it is, and must be always one of the five beasts of forest aforesaid, or one of the five beasts of chase, or else the same is not to be called Venison. And according

ding to this interpretation, the Forest Laws, and the very Kings, Princes, and the Law makers themselves, do understand this word Venison, which in Latin is called Venatio, as it appeareth in the 1. book of Kings, in these words, Erat autem cibus Solomonis per dies singulos triginta Cori similæ, & sexaginta cori farinæ, decem boves pingues, & viginti boves pascuales, & centum pecudes, excepta venatione Cervorum, Solomons food was every day, thirty quarters of manchet flower, and 60. quarters of meal, 10. stalled oxen, and 20. oxen out of the pastures, and an hundred sheep, besides the venison of Harts. And all the whole scope of the Forest Laws tendeth to the preservation of Vert and Venison: By which word Venison is understood, every beast of forest and chase: as it doth appear in Charta de Foresta in these words, Præterea, singulis quadraginta diebus per totum annum, conveniant Forestarii & Viridarii, ad videndum attachiamenta de Foresta, tam de viridi, quam de venatione, Moreover, every forty days throughout the whole year our Foresters and Verderors shall met together, to see the attachments of the forest, as well for the offences and trespasses of vert, as of venison: So that if a man do hunt in the forest, and kill a Hare, the Forester may attach him for the same offence: for the same is a trespasse in the venison of the Kings forest. For proof hereof it appeareth in the Assises of ỹ forest of Pickring, that two men were indicted for striking of a Hare in her form, and for taking of another within the forest, and the one of them was committed to prison, and made fine and ransome for the same offence, and was bound to the good abearing of the forest, and the other was outlawed: whereby it is to be noted, that Hares are venison and beasts of the forest. And likewise it appeareth in Charta de Foresta in these words, Nullus de cætero amittat vitam vel membra pro venatione nostra, from henceforth no man.

Primo Reg. cap. 4. vers. 22.

Charta de Foresta artic. 8. in fine ibid.

Assisæ Forestæ de Pickring, fol. 13 An. 8 E. 3.

Charta de Foresta anno 30 [illegible]

man shall lose his life, nor members for the killing of our venison: where note, that that word pro venatione, must be understood for any beast of Forest or Chase: for before the making of the great Charter of the forest, the killing of any wild beast within the forest was punishable by the King at his will and pleasure, and not by any Law certain: And therefore the King might have punished a man for the killing of a Hare, or a Fox, or a Wartern, or any other beast of forest, before the granting of the great Charter of the Forest, even with the losse of life, or the losse of an Arm: And therefore to the end to take the best advantage of the words of the Charter, Nullus de cætero amittat vitam vel membra pro venatione nostra, must be understood, that the meaning of the Charter must be that from henceforth no man shall lose life or member pro venatione nostra, for the killing of venison: that is for the killing of any beast of Forest or Chase, and so that word Venatio, Venison, is understood any beast of Forest or Chase; and so likewise in the same Charter, where it is appointed, who only shall hold pleas of the Forest, in these words, Nullus Constabularius, Castellanus, vel Ballivus, teneat placita de Foresta, sive de Viridi, sive de Venatione, No Constable, Castellain, or Bailiff, shall hold any plea of any matters of the Forest, either of vert or of venison: Where Note, that there that word pro venatione, must be understood of the killing, hunting, or chasing of any beast that is within the Forest, be it beast of forest, or beast of chase: so that all the pleas of the forest are aut de viridi, aut de venatione, either of vert, or of venison: And again in the new Ordinances that were made by King Edw. the first, in 34. year of his Reign, called, ordinatio Forestæ (but in the Register of writs, and also of some others, it is called additio Forestæ) the King doth make a special prohibition or law, that every

Charta de Foresta, artic. 16.

Ordinatio Forestæ.

Fore-

Fozeſter of the fozeſt, ſhall pzeſent all the treſpaſſes and offences of the Fozeſt, at the next Swanimote Court, that ſhall be holden within the ſame fozeſt where the ſame treſpaſſe ſhall be done, the wozds being theſe, In primis ordinavimus pro nobis & hæredibus noſtris, quod de tranſgreſſionibus in Foreſtis noſtris, de viridi & venatione de cætero factis, Foreſtarii infra quorum ballivas hujuſmodi tranſgreſſ. fieri contigerint, præſentent eaſdem ad proximum Swanimot. coram, &c. Firſt, we habe decreed foz us and our heirs, that of treſpaſſes hereafter to be done in our fozeſts of bert and of beniſon, the Fozeſters oz Woodmen, within whoſe bailiffwick oz walks ſuch treſpaſſes ſhall happen to be done, oz committed, ſhall pzeſent the ſame at the next Swanimote befoze the Fozeſters, Verderozs, Regardozs, &c. where note, that all the treſpaſſes of the Fozeſt are there meant to be ſet dowm, and it doth there appear, that they are either of bert, oz of beniſon: And ſo then this wozd Veniſon muſt be underſtood of ebery beaſt, meant and intended to habe pzibiledge within the fozeſt, which are the beaſts of fozeſt and chaſe. And in the ſame Ordinatio foreſtæ, whereas the King doth pardon offendozs, and ſuch as habe treſpaſſed in his fozeſts, the King doth pardon them by theſe wozds, de tranſgr. de viridi & de venatione, which is of all offences and treſpaſſes of the fozeſt, biz. of bert and beniſon, by which the King doth underſtand ebery treſpaſſe in hunting oz chaſing of any beaſt in the fozeſt, be they beaſts of foreſt, oz beaſts of Chaſe. The French Authozs that do wzite of the wild beaſts of Fozeſt and Chaſe, do uſe this wozd venaiſon alſo, indifferently, foz any beaſt of fozeſt oz chaſe: ſo that hereby you may ſee, that this wozd venatio, beniſon, is underſtood of fozeſters but only foz beaſts of fozeſt and chaſe. And in Charta de Foreſta, artic. 10. in theſe wozds, ſed ſi quis captus fuerit,

Ordinatio Foreſtæ, artic. 1.

Ordinatio Foreſtæ, an. 34. E. 1, art. 5.

Pierius in ſon primer Liure de la venery.

Charta de Foreſta, art. 10.

& convictus de captione venationis nostræ, but if any man be taken and conbicted for taking of our benison, he shall make a grievous fine: There it doth appear, that this word Venison is taken for every beast of forest and Chase. And so likewise in the same charter, in the 16. artic. where the words are these, Sed quilibet Forestarius de feodo attachiet placita de foresta, tam de viridi, quam de venatione, but every Forester of fee shall make attachments for pleas of the forest, aswell of wert, as of benison: so that thereby it seemeth, that all the attachments and pleas of the forest, they are either of Wert or of Venison: then therefore this word venison reacheth to every beast that is meant and intended to have any priviledge within the limits of the forest.

Charta de Forestis, art. 16.

2. Of the general signification of Venison.

NOw concerning the general signification of this word Venison, it is often taken for any wild beast that is killed by hunting, as a Squirrel, a wild Goat, and such like, which are not beasts of forest nor chase. And so Hollinshed in his description of England reporteth, that in the East Countries they do use to hunt the Bear, which saith he, is excellent good benison: And by this word Venatio, being taken in the general sence, may be understood any manner of wild beast that is taken or killed by hunting. Ferina is also Venison, or in the general sence, the flesh of any wild beast that is taken in hunting, as a Squirrel, a wild Goat, or any beast of forest or chase; so that Venatio, or Ferina, being taken in the general signification, is no other, but as if a man should say, ferina caro, wild flesh, or the flesh of a wild beast, which may be understood indifferently of any wild beasts: But the foresters, nor forest Lawyers, do not understand this word Venatio, Venison, in that sence, for

Hollinshed, pag. 206. a. 30.

for they do understand by this word Venison, but only such beasts as are, or, in times past, have been beasts specially priviledged by the King within the forest, which beasts only are called beasts of forest, and beasts of chase, and none other.

3. Of the special signification thereof.

And even as this word Venison before in the second division of this treatise, hath a more large scope and signification, then in the first: so in some special particular sence, the same hath yet a more special and particular signification, then in either of them; for, whereas in the first division of this treatise, this word Venison is understood only for beasts of Forest and Chase: in some sence this word Venison is taken but only for the flesh of the Hart, the Hind, the Buck, and the Doe, and the beasts that are of that kind: for amongst the common sort of people, nothing is accompted Venison, but the flesh of Red and Fallow Deer: And the reason thereof is, because that the common people do not accompt any beast Venison, but that which is usually eaten and baked for venison, as the red and the fallow Deer is. And as for other beasts of Forest and Chase, albeit that the Foresters, and the Forest Lawyers, do accompt them Venison, for the pleasure and delight of hunting only, yet because they are not usually eaten and baked for venison amongst them, therefore these beasts do not carry the esteem, nor name of venison with some. But as Budæus saith, you must therefore understand, that this word Venison is two-fold; for, saith he, there are some wild beasts, that are esteemed venison as well for the dainty and pleasant taste of the flesh for meat for Princes, as also for the great delight and pleasure that is in chasing, hunting, and killing of them,

Budæus in 2. libro Philologiæ.

ſuch are all the ſorts of Red and Fallow Deer: And again, there are ſome other ſort of wild beaſts, that are alſo priviledged, which are eſtéemed Veniſon, rather for the princely delight and pleaſure, in hunting, chaſing, and killing of them, then in the pleaſant taſte and ſwéetneſſe of their fleſh, and ſuch are all the reſtóue of the beaſts of Foreſt and Chaſe, which are not uſually eaten, when they are killed and taken by hunting. We read in the 25. of Geneſis, that Iſaac lo-
Gen. cap. 25. bed Eſau, becauſe he did eat of his veniſon. And alſo in
Gen. 27. the 27. of Geneſis, we read that Iſaac called his ſon Eſau, and commanded him to take his bow and his arrowes, and to go to the fields, and to take him ſome Veniſon, to make him meat that he lobed: Here this word Veniſon is to be underſtood but only of Red Deer, or fallow Deer, and not of other wild beaſts that were not to be eaten. And thus you may ſee the ſpecial ſignification of this word Veniſon, and how the ſame is to be underſtood diverſly, and in divers ſences.

4. Whereof the ſame receiveth the name of Veniſon.

THis word Veniſon, is called in Latin Venatio: in every place where veniſon is ſpoken of in Charta de Foreſta, and in Ordinatione Foreſtæ, there ſtill this word Venatio is uſed, and not any other word, and as it ſéemeth, very aptly for that purpoſe: for Venatio cometh of the verb Venor, Venaris, to hunt, and is there taken for a wild beaſt of foreſt or of Chaſe, that is to be taken by hunting, or to be hunted, as well thoſe beaſts that are not uſually eaten for Veniſon, as thoſe that are eaten. But ſuch veniſon, as we do accompt veniſon only for the goodneſſe of the meat (as Red Deer and fallow Deer) is called more properly in Latin, Ferina,

as

as it doth appear by the Poet Virgil in his Æneads in theſe words: Virgil, lib. 1. Æneados fol. 100.

Implentur veteris Bacchi pinguiſque ferinæ:

They were well filled with fat Veniſon and old wine. But our Engliſh word Veniſon is deriued from the French tongue, which doth call the ſame venaiſon, very little differing from us, which word venaiſon cometh of the verb vener, to hunt. Alſo our eldeſt Engliſh writers do call the ſame Venſon, and not Veniſon: But by what reaſon I ſee not. Budæus reporteth this old verſe of Veniſon:

Non eſt inquirendum, unde venit Veniſon,
Nam ſi forte furto ſit, ſola fides ſufficit.

If any man chance to be bid to his friends houſe to eat his part of fat Veniſon, let him remember this old verſe, which in Engliſh is this:

It is not to be inquired from whence veniſon cometh,
For if by chance it ſtollen be,
A good belief ſufficeth thee.

CHAP. VI.

1. *What is Vert in general.*
2. *How many ſorts of Vert there are.*
3. *What is Vert in the Kings own Woods.*
4. *What ſhall be ſaid to be Vert in the woods of every common perſon.*
5. *Whereof the ſame receiveth the name of Vert.*

1. What is Vert in general.

TO proceed with Vert, being the other of the foreſaid principal ornaments of a foreſt, it is manifeſt, that even as a foreſt, having neither

beast of Venery, nor beast of chase in it, is no forest at all, but a void and unprofitable piece of ground for that purpose: for although that the same place do still remain privileged, yet the same retaineth no more of a forest, but only the bare name: forasmuch as the wild beasts of the forest, for which the same was first privileged and made a forest, are utterly destroyed and exiled from thence: So likewise, if the Vert of the forest be cut down and destroyed, the want of it doth in short time make a forest to be no forest: for the destruction of the Vert in the forest, doth always banish the wild beasts out of the forest, and therefore the forest Laws do as greatly regard the preservation of the Vert of the forest, as they do the Venison: Insomuch that Vert hath always the first place before Venison: Because to preserve well the Venison of the forest, it is first to begin with the Vert, and to preserve the same, forasmuch as the plenty of Vert in a forest, is the only chief means to preserve Venison, and to have plenty thereof: And contrariwise to destroy the Vert of the forest, is the means to destroy the Venison and wild beasts of the forest, and there is nothing that doth so much deface and disgrace a forest, as to cut down and destroy the covert, which is the Vert of the forest. And therefore it is to be noted, that there are three special causes, why the forest Laws have so carefully provided for the preservation of the Vert of the forest.

The first is, because that the very nature of the wild beasts of the forest is, to resort unto the woods and great coverts, wherein they do take their chiefest delight and felicity to be secret and quiet in their couches, or as it is said in 38. chapter of Job, Ubi cubant in antris, & in specubus insidiantur, where they do lie secretly in their bowers, and watch in their secret coverts.

Job chap. 38. in fine ibidem.

And

And as Budæus saith, In silvis impeditissimis sunt conciliabula ferarum, ubi gaudent requiescere feræ. The wild beasts of the forest have their secret counsel houses in the greatest thick woods, where they do most chiefly delight to take their rest. And as the wild beasts do delight to have their abode in the coberts and great woods, so the same is again a most special shelter for them, in the winter from the cold, and in the summer from the heat. And if a wild beast of the forest be hunted or chased, he presently taketh the coberts as a refuge and safegard for him, to flie unto, and for this cause the forest laws have always had a special regard for to preserve the Wert of the forest. Budæus in 2. libro philologiæ.

The second cause is, for that the woods and coberts of the forest, or at the leastwise those that are accompted especially Wert, do bear fruit, which is food for the Deer in winter, when there is little grasse or other meat for them to feed upon, and then they do feed upon Acornes, Hawes and Sloes, and such like. And when there is not sufficient food for the Deer, neither of grasse, nor of such fruits, then the forresters that have the charge of the wild beasts, must provide Browsewood to be cut down for them to feed upon: So that the woods and coberts of the forest are not only preserved to be coberts, to hide and succor the Deer in: but also, to be food for them in the great frosts and snowes, and in the hard weather when the ground is covered, when they cannot get any other food otherwise.

The third cause of the preservation of the Wert of the forest, is Propter decorem, that is for the comlinesse and beauty of the same in a forest, for the very sight and beholding of the goodly green and pleasant woods in forest, is no lesse pleasant and delightful in the eye of a Prince, then the view of the wild beasts of forest and Chase, and therefore the grace of a forest is,

to be decked and trimmed up with store of pleasant green coverts, as if it were green Arbors of pleasure, for the King to delight himself in, as it is written, In libro Rubro Scaccarii. Quia in Forestis penetralia regum sunt, & eorum maximæ deliciæ, ad has quidem venandi causa, Curis quandoque depositis, accedunt, ut modica quiete recreentur illic, Seriis simul & multis Curiæ tumultibus omissis, in naturalis libertatis gratiam paulisper respirent, unde fit, ut delinquentes in ea soli regiæ subiaceant animadversioni: because that in the Forests there are the secret pleasures and princely delights of the Kings, for Kings & Princes do resort unto the Forests for their pleasure of Hunting, having for that time laid aside all cares, to the end that they might there be refreshed with some quiet, being wearied with the continual business of the Court, they might, as it were, breathe a while, for the refreshing of their free liberty. And therefore this is the third cause, why the Laws of the Forest have so prohibitedly provided for the preservation of the Vert of the Forest.

Having declared the use and necessity of Vert in a Forest, it is necessary also to shew what is Vert. And for that you shall understand, that Vert, in general, is every plant, that doth grow within the Forest and bear green leafe, which may hide or cover a Deer under it. But here you must understand this word plant, for such plants, as are either trees, woods, bushes, or such like, which are of the nature of wood or underwood: And not of those kind of plants, which are of the nature of herbs, as thistles, and such like, which likewise may also be comprehended within the word plant, but not in this sence. After the making of Charta de foresta, there was some question amongst those that were unlearned in the Forest laws, what was Vert: some did affirm that nothing within the Forest was Vert, or to be accompted Vert, but only those trees which did bear fruit

to

to sell the Deer withall, which was clean contrary to the laws of the forest, but yet to the end to avoid this foolish opinion, and to make the certainty known to all men, what is Vert within the forest, King Edw. the first made this Law, Sciendum est quod omnes arbores fructum non portantes, & hæ quæ fructum portant per totum annum, & fraxinus, si antiqua fuerit, in Foresta & arabili, quia dominus rex est in seisina: Know ye, saith the King, that all trees which shall be growing within the forest, as well those which bear no fruit at all, as those which do bear fruit at any time in the whole year, and an old Ash, being in the arable land within the forest, these shall be accompted Vert, because the King is in possession of them: by this you may see and know, what is Vert; for here the King hath made a law to explain this doubt, what shall be said to be Vert, which is, every tree that doth grow within the forest, as well that which is called Hault Boys, as that which is called South Boys, that is great wood and underwood; for these words, Omnes arbores, must be understood and taken, as well for underwoods as for great woods, as it doth appear in 23. H. 6.

Anno 6. E. 1. Kastals abridgment of statutes in titulo forest. 21.

11. H. 4. fol. 32. Case 59. H. 20. H. 6. f. 22. Case 20.

2. How many sorts of Vert there are.

AND you shall understand also, that there are two sorts of Vert in every forest, that is to say, Over vert, and Nether vert: Over vert is that, which the Lawyers do call Hault Boys, and Nether vert is that, which the Lawyers do call South Boys; and in the forest Laws, Over vert is all manner of Hault Boys, or great wood, as well such as beareth fruit, as such as beareth none. Old Ashes and Holly trees they are accompted Over vert. Nether vert is that, which the Lawyers do call South Boys, and that is properly all manner of underwood, and also Bushes, Thornes, Gorse, and such like, and some men do take Fearn and Heath

to be Nether vert, but it cannot be so, unlesse that the same be underwood, or of the kind of underwood, as Master Serjeant Fleetwood saith: And with this also agreeth M. Hesket in his reading upon Charta de Foresta, and yet it is not lawfull for any man to burn or destroy, either Fearn, or Heath, or such like within a forest, because that it is taken by the assises of the forest to be coverts for the Kings wild beasts.

M. Serjeant Fleetwood, fo. 4.

M. Heske, fol. 39. in his reading.

Assisa de pickring, an. 8. E. 3.

It was adjudged in the assises of Pickring, in An. 8. E. 3 that to cut down Lignum viride, or Ramos virides, within any forest, is finable Per assisam Foresiæ.

Ibidem.

And also he that cutteth down underwoods, thornes, elder trees, boughs, lignum siccum, siccos Ramos, & huj modi within the Forest, is a trespasser in Vert. King R. 1. in the 20. yer of his Reign, did appoint Hugh Nevil, Hugh Walley, and Hervesius Nevil, Justices Itinerants of his Forests, and commanded them to call before them, Archbishops, Bishops, Earls, Barons, Knights, Freeholders, with the Reve, and four of the substantial men of every Town or Village, to hear and take knowledge of the Kings commandment, touching the Ordinances of Forests, and those that offended in cutting down woods or bushes, or in digging or delving up of turfes and cloddes, or by any other manner of way made waste and destruction in woods or grasse, within the precincts of the Forests, contrary to the Laws of the same, they should be put to their fines: Here you may perceive, that it was not lawfull then, for any man to cut down woods or bushes, nor to dig turfes in his own ground within the Forest, and the same remaineth lawfull at this day, for this is not altered by Charta de Foresta in any point, nor by any other law since.

An. 10. Ric. 1. Hollinshed, fol. 153. b. 50.

Before the making of Charta de Foresta, in the time of King Hen. the second, and King Rich. the first, if any man were taken offending within the forest, is killing

Hollinshed, fol. 153. b. 50.

of

of his Deer, he was then punishable with the losse of life, of his eyes, or genitals: but this law was taken away by Charta de Foresta, in these words, nullus de cæteris amittat vitam vel membra pro venatione nostra, from henceforth no man shall lose either life or member for killing of our Venison: but the punishments and laws for Vert, that were in the time of King Hen. the second, or King Rich. are first, the Laws remaining in force still at this day, and not altered by Charta de Foresta. It appeareth in the new Ordinances of the Forest since Magna Charta, being made in the 6. yeer of King Edw. the first, called Assisa & consuetudines Forestæ, that by the forest Laws, men that dwell within the forest may not cut down house-bote, nor hedge-bote within their own woods, without the view of the forresters; and if any man do, he is a trespasser in the Vert of the forest.

Rastall in his Abridgment of statutes, titulo Forest. 21.

Besides the former division of Vert, into Over vert, and Nether vert, the Forest Lawyers have a third sort of vert, which they do call Special vert, which is every tree and bush within the forest, that doth bear fruit to feed the Deer withall, as Peartrees, Crabtrees, Hawthornes, Blackbush, and such like: and the reason, why they do call the same Special vert, is because the offence in destroying of such vert, is more highlier punished, then the offence in the destruction of any other vert, according to the quantity thereof. And here note, that Special vert may be either, Over vert, or Nether vert, if the same bear fruit; for none is taken for Special vert, whether the same be Over vert, or Nether vert, unlesse it do carry fruit to feed the Deer and wild beasts withall.

3. What is Vert in the Kings own Woods.

IN every forest of the Kings, or in the most part of them, there are some woods, that are the Kings own demesne woods. And therefore you shall understand, that

that every tree which doth grow in the Kings own demesne woods whether they be Haut Boys, or South Boys, great wood or underwood, or whether the same do bear fruit, or not, at any time in the year, they are all accompted Special vert, and so they were accompted even by the Charter of the Forest, that was granted by King Canutus, as it doth there appear in his Canon 28. in these words, Bosco nec subboſco nostro, sine licentia primariorum Forestæ, nemo manum apponat; quod si quis fecerit, reus sit fractionis regalis Chaceæ: No man shall lay his hand upon our great wood or underwood being within our demesnes, without license of our Verderors or chief men of the Forest; and if any man shall do the contrary, he shall be guilty of the breach of our free Chase Royal. And as every tree in the Kings own demesne woods is Special vert, so is the same there specially priviledged, and the offendors in the Kings own vert, are more especially punished, then the offendors in vert which doth grow in the woods and grounds of other men: for if any man do cut down Bushes or Thornes in the Forest, being within the Kings own demesne woods or lands, and carry them away with his cart, in this Case the cart and horses shall be seised unto the Kings use, and he shall be fined to the value of the wood. And also if any man do cut down Vert within the forest in the Kings own demesne woods, and doth carry away the same upon his horse-back, he shall forfeit the price of the Vert, and his horse also to be seised to the Kings use. So that every small tree, or bush, growing in the Kings ground within the Forest, is Special vert, because that the trespassers in the Kings own vert are more specially punished with a greater penalty, then those which do offend in the Kings vert, which is growing in the woods and lands of other men. In the Assises of Pickring in An. 8. of King Edw. the third,

Charta de Foresta Canuti regis, Can. 28.

Itin Pickring, An. 8. E. 3.

third, there are ſundry preſidents againſt ſuch as are treſpaſſers in the Kings vert in his own woods: whereof amongſt many I will recite one, which is this, Præſentatum eſt per Foreſtarios, & convictum per viridiarios, quod Humfredus Tober cepit undecim virides quercus infra dominicum, precii cujuſlibet 1 d. & cariavit illas cum uno plauſtro & ſex Bobus, quæ appreciantur, viz. plauſtrum ad vi. d. & Boves ad 16 s. precii cujuſlibet 2 s. 8 d. unde tenentes terræ & tenementorum Richardi de 8 viridarii iſtius Foreſtæ, ad cujus manus precium præfictum devenit, reſpondeant, & ſimiliter pro forisfactura ejuſdem, undecim ſolidos; by which preſentment, you may note this difference; that in every preſentment againſt an Offendor in Vert, in the Kings own woods, there it is ſaid Infra Dominicum, and then always the Cart or other thing that doth carry away the ſame vert, is forfeit to the King. And in the conſtitutions of the Foreſt that were made and ſet down for Vert by King Edward the firſt, in the firth peer of his Reign, being after Charta de Foreſta, there is likewiſe this difference in every Branch or Article of the ſame, that where it is meant & intended to concern the vert in the Kings own woods, there the words are always, Infra dominicum. And where as there is not this word Infra dominicum, there the ſame doth concern the Vert that is in other mens woods and lands, and not in the Kings own lands.

Aſſiſa Foreſtæ de Pickring, An. 8. E 3.

Aſſiſa & conſuetudines foreſtæ artic. 2. In the abridgment of ſtatutes of Raſtal, titulo foreſtæ 21.

4. What ſhall be ſaid to be Vert in the woods of every common perſon.

IN the woods and lands of every common perſon, which are within the regard of the Foreſt, all great woods and underwoods are called Vert; (as already before hath been ſhewed) whereof ſome are Over vert, and ſome are Nether vert, but none of them are called Special vert, being out of the Kings own woods, but ſuch

such trees as do bear fruit to feed the Deer, which because they are such trees as cannot be spared out of the forest, so well as other trees that do not bear fruit, therefore they only are called Special vert, as it appeareth in the Forest Laws of Canutus, Canon. 29. Si quis verò ilicem, aut arborem aliquam quæ victum feris suppeditat, scinderit, præter fractionem regalis Chaceæ, emendet regi viginti solidis, if any man do cut down a Holly tree, or any other tree within the Forest, which doth bear fruit for food for the wild beasts, besides the breach of the Kings free Chase Royal, he shall pay twenty shillings to the King for a recompence. And in the new Ordinances of the Forest, that were made after Charta de Foresta, in the sixth year of King Edw. the first, Si quis inventus fuerit extra dominicum Boscum, & infra Regardum, prosternens quercum sine visu aut liberatione forestarii aut viridarii, debet attachiari per quatuor plegios, & per visum viridariorum debet quercus appreciari, & in Rotulo Forestariorum & viridariorum nomina plegiorum imbreviari, If any man shall be found felling of an Oak, without the Kings woods, and within his own freehold, being within the regard of the forest, without the view or delibery of the forester or verderor, he shall be attached by four pledges, and by the view of the verderors the Oak shall be praised, and the names of the pledges shall be written in the Roll of the foresters and verderors: So that by this it appeareth that an Oak, which doth bear Acornes to feed the Deer withall, shall not be cut down, although the same do grow in a mans own freehold, without the delibery of the foresters or verderors. And the like is of every tree that doth bear fruit to feed the Deer withall, and therefore they are called Speciall vert, that is to say, a vert that the Laws of the Forest do more specially regard, then other vert. And note this difference

Canutus in his ordinances of the forest, Canon. 29.

Assisa & consuetudines forestæ in Rastals abridgment of statutes, titulo, forests 21.

difference between the Kings own woods and the wood of a common person, that in the Kings woods every Tree is Special vert, and in the woods or lands of a common person, no tree is special vert, but that which doth bear fruit to feed the Deer withall. The punishment for offendors in special vert, and also in any other kind of vert, being out of the Kings own woods, is to be fined for the same, according to the quality and quantity of the offence: but the offendors that have been found trespassing in Special vert in the Kings own woods, they are to be punished for the same according to the quality and quantity of the trespasse, and also the Cart and Horse and all things that do carry the same vert, is forfeited to the King. Note the differences: It doth seem by those words, Nec interest, cujus sunt nemora, sive regis, sive procerum, &c. For it doth not skill, whose woods the same be, that are in the Kings forest, whether they be the Kings woods, or the woods of his noble men; for the Kings wild beasts must have their free concourse in every part thereof: where note, that for as much as the King by his prerogative may use other mens woods for the succour of his wild beasts, it must needs follow, that no man may destroy the same woods, without the which the Kings Deer can have no continuance in the Forest.

Assisa Lancastriæ, an. 8. E. 3. in Casis Fitzherbon.

In Rubro lib. Scaccarii.

Of such woods as are accompted Vert, being out of the Kings own woods, the Laws of the Forest do most specially respect great cobert, and the special vert, which doth bear fruit for to feed the Deer; and as for the cutting down of any of the other, although the same be done without license, yet if that they do stand scattering here and there, so that they be not many in number, nor that the cutting of them be no spoil or hurt to any great cobert of the forest, although that the same be a trespasse in Vert, yet de minimis non curat lex, the law regardeth not every trifle,

5. Where,

5. Whereof it receiveth the name of Vert.

This word Vert, taketh name à viriditate, of greenness, for it is always understood but of such things as do grow within the Forest and are green; it is called in our old English Green Hew, in Latine it is called Viridis, and thereof is framed this word Viridarius a Verderor, or one that doth take the charge of the Vert, or of Green Hew. The French Writers do call it Verd, differing but one letter from our English word Vert. And thus much concerning Vert.

CHAP. VII.

1. *Of the meers and bounds of the Forest.*
2. *That every Forest of necessity must have meers and bounds.*
3. *That all the meers and bounds of the Forest do belong unto the King only.*
4. *The difference between,* Infra Regardum foresiæ, *and,* infra forestam.

1. Of the meers and bounds of the Forest.

As Parks are inclosed with wall, pale or hedges, so Forests and Chases are inclosed by meets and bounds, without which they cannot be Forests or Chases, Co. 4. Inst 317.

Every Forest, being a Franches within it self, must be inbironed with marks, meers, and boundaries, round about the same, whereby the circuit of ground, that is Forest, may be known

and

and discerned from that which is not Forest. How, and in what sort, those marks, meers, and boundaries are to be known from time to time, and what manner of marks, meers and boundaries, those are, and their several differences, hath already been shewed before in the first Chapter.

Meers are either inclusive, as Ways, Rivers, &c. or exclusive, as Churches, &c. Mera of μείρω which signifies to divide or bound. Bunda a bunna saxonicè, signifying a higher thing, as hills, houses, trees, &c. Marthia is derived from the Saxon word March, now a mark, sed meta accipitur pro quocunq; term. limite seu fine, Co. 4. Inst. 318.

2. That every Forest of necessity must have meers and boundaries.

IT is most necessary, that the very true meets and limits of the Forest should be known unto all men, and most especially to those, that are the Officers of the Forest, and that for many causes: for, if a man be presented for the killing of a wild beast of the Forest, the place, where the same was killed, is very material to be known: for, although that the same were a wild beast of the Forest, yet, if that it were killed out of the Forest, which in some sort may be done, and yet no offence to the Forest Laws, and therefore the limits and bounds of the Forest are especially to be known: And also, when the regard do go to make their view of the forest, and to see the spoil of the woods and coverts, and of all such articles, as they are by their office and oath charged to view and inquire of, there the limits and bounds of the Forest must needs be known unto them, for otherwise they may deal with matters that are dehors, and out of the Forest, and that they may not do. And whereas the words of Charta de foresta are, Homines verò, qui manent extra forestam, non veniant de cætero coram Justiciariis nostris de foresta, per communes summoniones, &c. Men, that dwell out of the Forest,

Vid. Stat. 17. Car. primi sup.

Charta de foresta, artic. 2.

from henceforth shall not come before the Justices of our Forest by common Summons: There, by these words Extra forestam, it is to be noted, that every forest must have certain marks, meers, and boundaries especially known, whereby it may appear, who be dwellers within the forest, and who not: and whereas in the Statute of 21. E. 1. the words are, Si quis forestarius, &c. In balliva sua malefactores aliquos invenerit vagantes ad dampnum ibidem faciend', & qui se forestariis, &c. If any Forester do find any trespasser wandering within his liberty, which is within the Forest, intending to do hurt or damage therein, and after hue and cry made to him, to stand unto the peace, will not yield himself, but do flie or resist; in this case, if the forester do kill any such offendor, he shall not be impeached for this felony: Here it is most necessary, that the limits and bounds of the Forest be known very well; for in this case the limits and bounds of the Forest, as it may fall out, are issuable, for the killing of such an offendor within the limits of the forest, or without, maketh it felony, or no felony: Wherefore, it is a maxime in the forest law, that every forest must have limits and boundaries that are known, as things to the same inseparably incident.

Statute de malefactoribus, anno 21. E. 1. Magna Charta fol. 117. b Rastal, titulo forest. 19.

3. That all the meers and bounds of the Forest do belong unto the King only.

AND because that every Forest must of such necessity have marks, meers, and boundaries, apparantly knewn, therefore to the intent that such marks, meers, and boundaries, should not by fraud be removed, or otherwise spoiled or defaced, to the deceit of the King, or other Lord of the Forest, It is established as a Law, Secundum assisam forestæ, Anno 6 E. 1. quod omnes

meræ

metæ forestæ integræ sunt domino regi, that all the bounds of the Forest are wholly the Kings, except in some certain cases, as before in the first Chapter hath been shewed.

This is to be understood quoad jurisdictionem & imperium, & non titulo foresti. 21.

quoad dominium, Co. 4. Inst. 318. Rastals abridgement, of Statutes, Versus finem, Ibidem.

In the Assises of Pickring it was adjudged, that no man may fish in any River that is a boundary or meer of a Forest, unlesse that he have warrant so to do; for the same is parcel of the forest, and it is also the Kings, because it is a meer of the forest.

Assisa forestæ de Pickring, an. 8. E. 3. fol. 11.

The Abbot of Whitby did kill a Hart within the River of Dervent, which was the mæres of the Forest of Pickring. The Abbot and his company were indicted for the same, Quia ceperunt unum cervum in aqua de Dervent, quæ est Marchia forestæ & venationem illam secum asportavit; and for this cause he made his fine and ransome, and was bound to the good abearing of the forest: by this you may note, that the mæres and bounds of the forest are parcel of the forest. And by this you may also gather, that if a purlue-hunter do chase a Deer in the purlues, and his dog doth not pinch the Deer, until that the Deer do recover a meer of the forest, here in this case, the owner of the dog must not have the Deer, although that the dog do kill the same in the meer of the forest, because that the meer of the forest is parcel of the forest, and then the Deer had recovered the forest being his priviledge, before the dog did kill or seise, and then so soon as his feet were in the meers of the forest, no dog having hold of him, he is the Kings, and in the protection of the King, and then no man may touch him, but he shall be a trespasser of the forest.

Anno 8. E. 3. Pickring. fo. 6.

If any man kill or hunt any of the Kings Deer in any part of a River, Highway, &c. being an inclusive boundary of the forest, he is as great an offendor, as if he had killed and hunted within the main rutment of the Forest, albeit the state or interest of the soil of the highway be in other men, Co. 4. Inst. 318.

4. The difference between, *Infra Regardum foreſtæ*, and *infra foreſtam*.

In reading of the new Ordinances of the Forest, that were made and set forth in the sixth year of King Edward the first, which you may see in Raſtals Abridgement of Statutes, in titulo Foreſt, 21. you shall often find these words, Infra regardum, or infra rewardum, which is all one, and also these words, Infra metas Foreſtæ, and sometimes, in foreſta: and therefore you shall understand, that sometimes there may be a great difference between these words, Infra rewardum, and infra metas foreſtæ, for it may so fall out oftentimes, that a thing is done infra metas foreſtæ, and yet the same be Extra rewardum foreſtæ: but a thing cannot be done infra rewardum foreſtæ, but the same must of necessity be infra metas foreſtæ: Note the difference; as for example, in the third Article of the said new Ordinances, the words there are these, Si quis iuventus fuerit extra dominicum Boſcum, & infra rewardum, proſternens quercum &c. If any man shall be found cutting down of an Oke, which is out of the Kings own Woods, and yet within the regard, there these words, Infra rewardum, cannot be taken in any sence, but that the same must of force be infra metas foreſtæ: But contrariwise it is of these words, infra metas foreſtæ; as for example, in the fifth Article of the same Ordinances, the words are these, Si quis attachiabilis fuerit contra vad' & pleg', debet diſtringi per catalla ſua infra metas foreſtæ inventa &c. If any man shall be found attachable contrary to his sureties and pledges, he shall be distrained by his catel found within the bounds of the forest: here, in this case, such an offendor may have cattel that are distrainable, which are infra metas foreſtæ, and yet they may be Extra rewardum

Aſſiſa & conſuetudines foreſtæ, anno 6. E. 1.

Aſſiſa & conſuetudines foreſtæ, anno 6. E. 1. article 3.

Ibidem artic. 5.

dum foreſtæ, as if ſuch cattel were remaining in certain woods or grounds that the King by ſome charter hath exempted to be free from the burden and charge of the Foreſt; ſo that although they are Infra metas foreſtæ, yet they are Extra rewardum. Vide the ſame Ordinances in titulo Foreſtæ. 3. 4. 5. 10. 11. 12. 15. 17. 20.

I find that in the time of Edward the firſt, when as Hugo Deſpenſer was Juſtice in Eyre of all the Kings foreſt s Ultra Trentam, when the perambulations of the foreſts were made, there were divers woods within the limits and bounds of the foreſt that were exempted out of the regard of the foreſt, as it doth appear by their claims and charters, ſhewed and pleaded in ſundry Iters.

In libr. Glaſconiæ, fol. 81. The chief Juſtice of the Foreſt may aptly be called Juſtice in Eyre, for ſo he is and hath authority and juriſdiction to hear and determine concerning Vert and Veniſon, &c. by virtue of Letters Patents under the great Seal, whereof there be two, one for the Foreſt on this ſide the Trent, the other beyond, Co. 4. Inſt. 291.

And I have ſeen the like of divers foreſts Citra Trentam, in the time of Edward the firſt, when Adam de Valentia Earle of Pembrooke, was chief Juſtice in Eyre of all the Kings foreſts Citra Trentam: So that ſometimes it falleth out, that there are ſome woods that be within the bounds and limits of the foreſt, and yet they are no part of the foreſt, as in times paſt Wallwood in Eſſex was; for the ſame was within the foreſt of Waltham, and yet not any part of the Foreſt of Waltham, nor within the Regard of the Foreſt: So likewiſe Havering Park is Infra metas foreſtæ de Waltham, but yet the ſame is out of the Regard of the foreſt, and not any part of the foreſt. And likewiſe it is to be noted, that if a man have a Manor, whereunto doth belong a certain wood, the which wood is within the compaſſe of the foreſt, ſo that the ſame is Infra metas

Lin. Pickring, fol. 11. Foreſtæ, or inbironed with the forest, the which wood is notwithstanding without the Regard of the forest; in this case, by the Assises of the forest, he must make his claim by these words, Gilbertus de Acton Clamat tenere Boscum suum de Troveſdale, partiment. ad manerium suum de B. extra regardum foreſtæ, viz. illum Boscum, qui est ex parte Boreali, &c. And so to recite all the limits and bounds of the same very truly: But all such woods and lands, as are parcel of the Forest, the same is within the regard: And all such lands as are within the bounds of the forest, and yet not any part of forest, the same is out of the Regard; and this is the meaning of the same Ordinances and Assises of the forest.

CHAP. VIII.

1. *Of the woods and coverts of the forest, and of their differences.*
2. *That the Laws of the forest do restain every man from cutting down of his woods within his own freehold in the forest.*
3. *How, and in what sort, men may cut down their woods within the forest.*
4. *What shall be said to be waste by the Laws of the forest.*
5. *What forfeiture and punishment doth grow to him that doth commit waste within the forest.*
6. *Whereof the same receiveth the name of Waste.*

1. Of the woods and coverts of the Forest, and of their differences.

IT hath already been declared before, that every forest must of necessity be replenished with woods & great coberts, for the succour of the wild beasts both

both of foreſt and chaſe: and therefore the Laws of the foreſt eſpecially provide for the preſervation of thoſe woods and coverts, whether they be the woods of the King, or the woods of any other perſon: So that, if any man have woods within any foreſt, although that the ſoil wherein thoſe woods do grow be his own freehold, yet he may not cut down nor fell his woods nor coverts there: and note, that woods and coverts are all one in ſome ſence and ſignification, but in ſome ſence and ſignification they do differ; as thus, where the trees do grow ſcattering, here and there one, ſo that thoſe trees do not one of them touch another, ſuch places are called woods, but they are not properly to be called coverts: For coverts are thoſe woods, that are thickets and full of trees which the Latiniſts do call Impeditiſſimæ ſilvæ: And Cicero doth call a wood, that is a covert for Deer, Latibulum in one place, and in another place he calleth the ſame Dumetum: Budæus doth ſometimes call the ſame Umbraculum, the old Foreſters do call the ſame Coverts, as a word of art; for as they do call all the trees in the foreſt, vert, a viriditate, of greenneſſe, ſo they do likewiſe call all thoſe trees and woods that are thick and full of trees, Coverts, deriving the ſame from the French word Couvert, which in Engliſh is properly a ſecret biding place for the Deer, to hide them in, under the green vert.

A man may preſcribe to take and cut down timber trees within his own woods in a Foreſt, without the view of the Foreſter, notwithſtanding the Ordinance of 34. E. 1. and the ſtat. 1. E. 3. c. 2. becauſe that ſtat. is but in affirmance of the Common Law, and 34. E. 1. is no ſtat. and the ſtatutes that are only declarative antiqui juris, and not introductive novi juris, a man may preſcribe againſt them, Co. 4.

Inſt. 297. Virgil. Cicero. Budæus: And if a man hath a wood in a foreſt, and hath no ſuch preſcription, the Law doth appoint him a means to fell both wood and timber, ſo as it be no prejudice to the Game, but ſufficient is left beſides, and that is by a writ of ad quod dampnum, upon return whereof the King doth licenſe him, Co. 4. Inſt. 298.

2. That the Laws of the Forest do restrain every man from cutting down of his woods within his own freehold in the Forest.

Fitzherbert's abridgm. in trespass 229.

AND that a man may not sell, nor cut down his own woods being within the Forest, it doth appear by a Case adjudged in the time of King E. 1. that by the Laws of the forest no man may cut down his woods, nor destroy any coverts within the forest, without the view of the Forester, and license of the Lord chief Justice in Eyre of the forest, although that the soil wherein those woods do grow be a mans own freehold.

M. 9. & 10. El. Plowd. Com. fol. 332. b.

And also, in An. 9. & 10. Eliz. I do find one special Case concerning the felling of woods within the forest of Waltham; which Case is as followeth; Wray saith, that if a Manor which is within a forest of the Kings, as of Waltham, do escheat unto the King, and afterwards the King do give that Manor unto another in fee, he hath not in the gift of the Manor given unto him the liberty that he himself had in the Manor touching the forest, for nevertheless the same is within the forest, and subject to the seed of the Deer, and wild beasts of the forest, and he cannot cut down his woods that are there within the forest, without license of the Justice of the forest, for that is a thing collateral to the soil, and so, in the gift of the soil; a thing collateral to the soil, as things of prerogative, or a liberty, cannot passe: By which case you may note, that no man can have any Manors or Lands within the forest, but that they must be subject to the Laws and bondage of the forest, unlesse that by some good title they be specially exempted out of the same; for the King must have his wild beasts maintained for his delight, which cannot be kept

kept and preſerved without coverts and ſecret places for them to reſt and abide in. And therefore the King hath a prerogative over the woods of every man within the Foreſt, that no man may fell or deſtroy his own woods, without license of the Juſtice of the foreſt. It appeareth by the new Ordinances of the foreſt, that were made in An. 6. E. 1. articulo 6. in theſe words, Liberatio autem houſe-bote & hay-bote fiat, prout Boſcus pati poteſt, in ſtatu quo eſt, & non ad exigentiam perentis, nec poteſt aliquid dare nec vendere de Boſco ſine warranto domini Regis: but livery of houſe-bote and hay-bote ſhall be made, as the wood may ſuffer the ſame to remain in the ſame ſtate in which it is, and not at the requeſt of the demandant, neither may he give or ſell any thing of the wood without the Kings warrant: by which law it doth appear, that a man may not take houſe-bote, nor hay-bote, but by delivery of the Foreſters; nor yet give nor ſell any of his wood without warrant of our Lord the King, or of his Juſtice in Eyre of the foreſt. And alſo by the ſtatute of Anno 1. E. 3. it is plain, that no man in the foreſt may take or cut down any wood, without the view of the Foreſters, or license of the Juſtice of the foreſt, although that it be in his own freehold, for the words of the ſtatute are theſe; every man that hath woods of his own within any foreſt may take the ſame wood without being attached by any Officer of the foreſt, ſo that he do it by the view of the Foreſters; therefore without the view of the Foreſters he cannot do it: And there is great reaſon that it ſhould be ſo, for the Foreſter doth know the want or plenty of other coverts neer unto it; and if upon the view of the foreſter he ſhall find that there are other ſufficient coverts neer at hand, he may the better ſuffer ſome one particular ſmall portion upon his view to be cut down for houſe-bote and hay-bote, but he

Vide Raſtals abridgement of ſtatutes, in titulo foreſt. 11. artic. 6. Ibidem.

Anno 1. E. 3. cap. 2.

he can give no license to cut down any wood; for if it be for to sell any covert, the Lord Justice in Eyre must give license for the same, for no man else can do it, but the King only.

Itin. Lancast. fo. 7. If any Subject that hath any wood within the forest, in his woodward do make default at any Justice-seat, his wood shall be seised into the Kings hands, and so it shall remain until he have replevied the same and made his fine.

Ibidem. If any man do take any Hawks, or destroy Aires of hawks in the Kings woods, they shall make fine for the same.

Ibidem. Item, that at every Justice-seat of the forest, the number of trees that have been given away by good warrant or otherwise, and also the windfals, must be presented. Likewise the profit of pawnage, rushes, fearn, gorse, sedges, and such like, must be presented there; but all this is understood of the Kings own woods or waste soil.

Pickring, fol. 187. By the assises of the forest, the chief forester must make accompt of all the trees that have been felled, and by what warrant they were cut down; and for those for which he cannot shew good warrant, he shall be amerced.

Pickring, fol. 10. If the owner of any woods within the forest do appoint a woodward, where there never was any before, it is fineable, Per assisas Forestæ.

In casu Melsa Pickring, f. 10. If any man do make charcoals of Brousewood within the forest, it is fineable: And if he will make title so to do by prescription, and do not make his claim thereunto, the first day of the Justice-seat, he shall then answer for the value of the coals to the King.

Assisa Pickring f. 19. The Lord of a forest may enter by his officers into any mans wood, the which is growing within the regard of the forest, and cut down Brouse-wood for the Deer in Winter.

Itin. Pickring, fol. 148. It appeareth in the Assises of Pickring, that Melsa claimeth within his woods in the forest to have the aires

aires of Faulcons, Marlens, and Sparrow-hawks, and notwithſtanding the letter of the great charter of the Foreſt, it was enquired of by the miniſters of the foreſt, whether he had uſed to have the ſame, or not: And the like claim was made by Gilbert of Acton: vide Chartam de Foreſta, Art. 13. for it ſeemeth by the words of the charter of the Foreſt, that every free man ſhall have within his own woods, Aires of Hawks, Sparrow-hawks, Faulcons, Eagles, & Herons, and ſhall have alſo the honey that is found within his woods: but it ſeemeth that the cauſe why the miniſters of the foreſt did enquire whether he had uſed to have the Aires of Hawks, or not, was becauſe that non uſer is cauſe of ſeiſure; ſo that notwithſtanding the charter, if he had not uſed the liberty, then the ſame muſt be ſeiſed into the Kings hands. Anno 8. E. 3. Charta de Foreſta, art. 13.

3. How and in what ſort men may cut down their woods within the Foreſt.

The Law being already declared, that no man may cut down his own woods within the foreſt, which is a very great bondage, it is requiſite alſo to ſhew what remedy there is to be had in this behalf, to the end that men may know how to relieve themſelves; wherefore if there be any man that hath woods within the foreſt of his own, that he would ſell, and cut down, then let him take this courſe: Firſt, let him repair to the Lord chief Juſtice of the foreſt, and there ſhew unto his Honour what his requeſt is, and hereupon the Lord chief Juſtice of the foreſt, underſtanding his ſuit, will cauſe a writ of Ad quod dampnum to be directed to the chief Warden of the foreſt, or to his Lieutenant, in theſe words, Jacobus, Dei gratia, Angl'. Scotiæ, Franciæ & Hiber. Rex, fidei defenſor, &c. Dilecto & fideli ſuo Vid. Co. 4. Inſt. 298. In Regiſtro brevium, fol. 257.

suo I.V. custodi Foresta suæ citra Trentam, Salutem: Mandamus vobis, quod per sacramentum tam Forestariorum & viridariorum foresta nostræ de I. quam aliorum proborum & legalium hominum de partibus illis, per quos, &c. inquiratis, si sit ad dampnum seu nocumentum foresta nostræ prædict', aut alicujus alterius, si concedamus R.B. quod ipsæ arbores in Bosco suo de M. qui est infra metas Foresta nost æ prædict', succidere, & eas, quo voluerit, cariare, ac commodum suum inde facere, & solum illud postmodum assertare, & in culturam redigere, ac parvo fossato & bassa haia, secundum assisam Foresta, includere, & illud sic assertatum, in culturam redactum & inclusum tenere possit sibi & hæredibus suis imperpetuum, necne: & si sit ad dampnum seu nocumentum dictæ Foresta nostræ, aut alicujus alteri s, tunc ad quod dampnum, & quod nocumentum Foresta nostræ præd. & ad quod dampnum & nocumentum alicujus alterius, & qualiter, & quo modo, & quantum Boscus ille continet in se per numerum acrarum, & quantum quælibet acra per se valeat per annum in omnibus Exitibus; & quantum Boscus ille distet a cooperto Foresta illius; & si sit ibi frequens reperium ferarum nostrarum necne, & inquisitionem inde distincte, &c. By vertue of which writ the chief Warden of the forest, or his Lieutenant, will forthwith cause the Foresters, Verderors, and other honest, sufficient, and lawfull men dwelling within the forest in those parts whereas the same wood is, upon their oaths, diligently, to enquire, and certifie the King in his Court of Chancery, in these ten points following.

1. Whether the cutting down of the same wood will be any hurt or annoyance to the forest of the King, or not.
2. Whether it will be any hurt or annoyance to any other person, or not.
3. What hurt and annoyance it will be to the forest of the King.

4. What

4. What hurt and annoyance it will be to any other perſon.
5. How and in what manner the ſame will be any hurt or annoyance to the foreſt of the King.
6. How and in what manner the ſame will be any hurt or annoyance to any other perſon.
7. How much the ſame Wood doth contain by the number of Acres.
8. How much every acre is worth by the year.
9. How far the ſame Wood is diſtant from any other covert of the foreſt.
10. Whether the wild beaſts of the foreſt do haunt or frequent the ſame Wood, or not;

And then, when the Foreſters, Verderors, and the other lawfull men of the foreſt, have viewed the ſame place, and have diligently enquired of every one of the ſe points, and made certificat thereof unto the King in his high Court of Chancery, or unto the Lord chief Juſtice of the foreſt, if it do appear by their certificat, that the ſame wood may conveniently be cut down, without any great hurt to the Kings foreſt or to any other perſon, and that the certainty of every Article aforeſaid is alſo certainly known, the Lord chief Juſtice of the foreſt may grant unto the owner of the ſame wood licenſe to ſell the ſame: but, before that he have any ſuch licenſe granted him, he muſt come before the Lord chief Juſtice of the foreſt, and there be bound unto the Kings Majeſty by recognizance, knowledged before him in a certain ſum of money, that from the time of the ſelling and cutting down of the ſame wood, during the ſpace of ſeven years next after, he ſhall fence and kep the ſame with ſufficient hedging and ditching, ſo that the ſame may thereby be well and ſufficiently preſerved from the hurt of Deer or any other cattel.

And

22.E.4.ca.7. And here note, that by the Statute of 22. of Edw. 4. men may make great and special fences about their woods, to preserve and keep them, after that they have felled them, until that they be grown again: And, whereas in the writ of Ad quod dampnum before recited, the words are, ac parvo fossato, & bassa haia secundum assisam Forestæ includere, which is, and with a small ditch, and a low hedge, to inclose the same, that is not meant nor intended of the fencing and inclosing of woods, as it doth appear by the words there; but only of such as were once woods, and are afterwards assarted and made tillage; and then indeed the same must not be inclosed in any other sort, but with a small ditch, and a low hedge, according to the Assises of the Forest.

For the avoiding of too great charges, and also of further trouble to those parties that do sue for such licenses to cut down their woods within the forest, the Lord chief Justice of the forest doth take a shorter course, which is, to grant out a warrant under his hand and seal of Office, directed to the officers of the forest, in the very same nature, and in those words that the aforesaid writ of Ad quod dampnum is: but yet, for that that the writ of Ad quod dampnum is the best, and the most perfectest example, therefore I have here set the same down, and the special points of it, in a short order, as before you have already seen.

But yet you must here understand, that, albeit a man do obtain of the Lord chief Justice of the forest a license for the cutting down and selling of his woods, yet he must preserve and keep them with fencing and inclosing, so that they may grow to be woods and covert again in a short time, so that when they are come again to be woods and coverts, then his neighbours may likewise have license to sell some of their woods: for he that hath a license for the selling and cutting down

down of his wood, hath not a license to destroy the same, except that he do obtain a special license to cut down the woods, and to assart the place, and to turn it into tillage, according to the president of Ad quod dampnum before recited.

SOme Questions being moved between the Earl of Nottingham Justice in Eyre in all the Kings forests, and the Earl of Dorset Treasurer of England, concerning the disposing of the Kings woods in his forests; for resolving whereof by the Kings commandment all the Judges of England were assembled, who upon conference and mature deliberation resolved these seven points following.

1. That the Justices in Eyre, and the Kings Officers within his forest have charge of Venison, and of Vert or green-hue for the maintenance or preservation of the Kings Game, and therein of all manner of trees for covert, bruise and pawnage. But when need is to sell seasonable woods within this forest, or timber for his Majesties use, the same must be sold or taken by force of the Great Seal, or Exchequer Seal, by the view of the Forester, to the intent that the woods or the timber shall not be taken in places inconvenient for the Game. But the Justices in Eyre or any of the Kings Officers within the forest cannot sell or dispose of any wood within the forest without Commission; and so the Exchequer and the Foresters have divisum imperium, the one for the profit of the King; and the other for his pleasure.

In Bags de forestis in custodia Rem. Regis 12. E. 1. Com. to sell the underwood in the Park of Clarindon, 17. E. 2. Com. to sell windfalls in the Park of Northampton, 28. Com. to sell wood in Clarindon, Nota minuti blaterones quercuum, Curli & Curbi in foresta de Grovele vend. virtute brevis domini regis simile, ibidem 10. 11. 13. and 14. E. 4. simile 17. H. 6. visum Literar. pat. H. 6.

2. That regularly neither the Court of Exchequer, nor any of the Kings Officers can dispose of the Kings timber

timber or woods, but it ought to be done by Commission, and as is aforesaid, for the Kings best profit.

1.E.3.stat.2.C. 2.constit. & all. forest.ubi supr.

3. That every man in his own woods within the forest, may take house-bote and hay-bote by the view of the Foresters, the Kings Farmers that have clauses in their Leases to take timber, &c. by view, &c. may take the same accordingly, and so may Freeholders by prescription, and Copy-holders, which by custom have used to take house-bote, &c. take the same by view of the Foresters, &c. or otherwise, according to the custom.

Vid. it in Pick. 8.E.3.Rot.30. the cause of Will.de Persey and Petronells his wife.

4. It was resolved, that no Officer of the forest could claim wind-falls or dotard trees for their fees by prescription, because they were once parcel of the Kings inheritance, but they ought to be sold by Commission, as before it appeareth, for the Kings best benefit.

5. That he that hath the herbage or pawnage of a Park, by the grant or demise of the King or any other, cannot take any herbage or pawnage, but of surplusage over and above the competent and sufficient pasture and feeding of the Game; and if the owner of the Game suffer the Game so to increase as there is no surplusage, then he that hath the herbage and pawnage cannot put any beast in the Park.

6. The owner of the Park may divide any competent parcel of the Park with rail, pale, or hedge, for the feed of the Game in Winter; and he that hath the herbage cannot put any beast therein.

Rot. par. 18.E. 1. fol. 16. the King may grant estovers in his forest, without view of the Forester.

Lastly, if the pasture and pawnage of the Park be but sufficient to feed the Game in Winter and Summer, the owner thereof may drive out the beasts of him that hath the herbage and pawnage; and thereby like assent of all the Judges the Court of Exchequer take this order following, with some reasonable additions.

Whereas

The order of the Exchequer upon the restitution of the Judges.

Whereas heretofore some Question hath been moved between the Lord Treasurer of England, and the Warden and Chief Justice and Justice Itenerant of all the Kings Majesties Forests, Chases, Parks and Warrens on this side the water of Trent, what appertaineth to each of their Offices and Places, concerning the dealing with and disposing of woods, trees and coppices within his Highnesses Parks, Forests and Chases, which being by his Majesty referred to the consideration and determination of his Judges and Barons; they have resolved touching the same by one uniform assent, as hereafter followeth, viz. That as the Lord Treasurer of England, for the time being, and Court of Exchequer have the only ordinary power under the King to deal therein, so far forth as it concerns the inheritance and profit of the Crown, as in the sale of woods, trees, coppices, and such like; so in like manner it concerns the Warden and chief Justice & Justice itenerant of all the Kings Majesties Forests, Chases, Parks and Warrens, and their ministers, to deal therein, so far as it may concern the preservation and maintenance of the Game, in respect of the shades, coverts, pawnage, and such like, for the Deer; and therefore it is resolved by all their opinions; that the Lord Treasurer of England, and Court of Exchequer may not sell any woods or coppices within any the Kings Parks, Forests or Chases (except wind-falls, root-falls, and meer dead and lear trees) without the privity and allowance of the said Warden and chief Justice and Justice Itenerant within whose jurisdiction it is; nor may cut down the dead and lore trees, nor carry them or wind-falls or root-falls away, but at fit times and by the view of such as have charge of the Game, whereby it may be seen unto, that the same may be done at fit and convenient times, and that no

trees, other then those that be dead and rear and meerly wind-falls and root-falls may be thrown or taken away without privity and allowance of the Warden, and chief Justice, and Justice Itenerant of his Majesties Parks, Forests or Chases.

And for the Warden and chief Justice and Justice Itenerant, and the Keepers and other Ministers of Parks, Forests and Chases appertaining to the King, they may not cut down any trees for new paling or railing, or for repair of Lodges without the warrant and allowance of the Lord Treasurer of England for the time being, but timber needfull for mending of small defects in old pales or rails that are broken, so as the same do not exceed two or three timber trees in any one Forest, Park or Chase, in any one year, they may be permitted to take of trees in places fit without making waste thereof, or any spoil, or prejudice to the Kings inheritance, making the Kings Surveyor of the woods specially acquainted, who is to see that the same hath been accordingly well imployed, and needfull house also in places fit, and times seasonable the Keepers may take for the Deer not cutting down the limbs or great boughs of the trees. And therefore, it is ordered by this Court, that from hencefoth where it shall be thought requisite to sell any of the Kings woods or coppices within any Parks, Forests or Chases, that a Writ or Commission in nature of an Ad quod dampnum, shall be directed unto the Warden and chief Justice and Justice itenerant within the forests within whose Government the same is to be done, to inquire and certifie what number of trees and what coppices may be sold, and in what places with least prejudice to the Kings Game. And that upon the return thereof the sale shall be made of such trees and coppices, as upon true certificate shall be thought fit to

be

be sold; and in like manner it is ordered, that for the new paling and new railing and new building of Lodges in any place within or about any his Majesties Parks, Forests or Chases, and the great repairs of old Pales, Rails or Lodges in or about the same, that it is to be done upon certificate from the Warden and chief Justice and Justice itenerant and the Surveyor of his Majesties woods, within whose jurisdiction it is by warrant from the Lord Treasurer of England, for the time being.

4. What shall be said to be waste by the Laws of the Forest.

And, even as to cut down the woods in a mans own Freehold, that do grow scattering here and there, is punishable by the Laws of the Forest, without license of the Lord chief Justice in Eyre, or view of the Forresters: so to fell or cut down any covert or coverts of woods in the forest without license, although that the same be growing in a mans own lands of inheritance, is so great an offence to the Forest, that the same not unworthily taketh the name of a waste of the forest. For to fell and cut down the woods that are coverts of the forest, without license so to do, is to waste and destroy the forest: And therefore to fell a covert of the Forest without license is called a waste of the forest: Wherefore, much more then if a man do destroy a covert of the forest, the same is a waste of the forest. For every destruction of a covert of the forest is a waste of the forest; but every waste of a covert of the forest is not a destruction of the covert, but only for a time; for a man may fell the woods of a covert, and destroy the covert for the time, and yet preserve the woods, so that the same may in time come to be a covert of the

M Hesket, in his reading of the Forest, f. 20.

forest again: but to destroy the woods of a covert of the forest, is so to waste the same that they will never come to be a covert any more. And therefore, a waste of the forest, and a destruction of the forest, are two things; and for that cause in the Assise of the forest of King Henry the Second, called the Assises of Woodstock, there is a special provision made, aswell for the one, as for the other, in these words, defendit dominus Rex, quòd nullus donet vel vendat aliquod ad destructionem Bosci sui, vel ad vastum, si sit infra forestam regis, Scilicet infra regardum: Our Lord the King commandeth, that no man shall give or sell any thing to the destruction of his woods or coverts, or to the wasting of them, if they be within the Kings forest, that is to say, within the Regard; but our Lord the King doth grant that it shall be lawful for every man to take that which shall be needfull for them of their own woods, without making of waste, that is to say, without wasting of the covert of the forest: So that every man that hath any woods within the forest, that are any coverts for the Deer, they that are the owners of them, are inhibited by the Law, either to waste or destroy those woods, or any part of them. And if a man do sell his woods, which are coverts within the forest, without licence; and yet doth so inclose, and fence those woods round about that they are well preserved to grow again, and that in a short time, then that shall be a waste of the forest, for as much as the covert of the forest is thereby lessened and wasted; but it is not a destruction of the forest, because the woods are not utterly destroyed, but preserved to grow again: For, as it is holden at the Common Law, that if a Tenant for term of life do cut down woods, and sell them, that is a waste, although that the same woods do grow again: even so it is by the Forest Law, that if a man do cut down a covert of

Assisa forestæ, H. 2. facta apud Woodstock, artic. 1.

Termino M. 20. H. 6. fol. 1. pl. 5.

the

the foreſt without licenſe, the ſame is a waſte of the foreſt, although that the covert doth grow again, for as much as the ſame felling of the covert doth for the time cauſe the exile and baniſhment of the wild beaſts from that place. But if a man have a licenſe to fell his woods within the foreſt, which are coverts, and afterwards, when he hath felled them, he doth not incloſe, nor fence them about, to preſerve them to grow again, by reaſon whereof the woods are eaten with cattel, and deſtroyed, ſo that they can never grow any more, then this is ſaid to be a waſte and deſtruction of the foreſt. And in like manner it is, if a man having a licenſe to fell his woods, and he doth fell them at ſuch unſeaſonable times, that they do thereby die, and grow no more to be a covert of the foreſt, this ſhall be ſaid to be a waſte and deſtruction of the covert of the foreſt: And as we do uſe to ſay in our pleading at the Common Law in an action of waſte, Idem R.P. fecit vaſtum, venditionem, & deſtructionem, &c. ad exhereditationem ipſius A.B. So likewiſe in an Indictment againſt an offendor, for deſtroying of a covert in the Foreſt, the preſident is thus, quod Johannes Melſa de Preſton, &c. Succidit Boſcos ſuos de Troveſdale infra foreſtam de Pickring, ſine warranto domini Regis, ad vaſtum & deſtructionem Cooperti ejuſdem foreſtæ, & ad exilationem ferarum domini Regis. But if the woods of the coverts be clean deſtroyed, ſo that they cannot grow again to become coverts, or a covert of the foreſt any more, then the preſident is thus, quod I. M. vaſtavit & deſtruxit boſcos & Coopertum ejuſdem foreſtæ in Troveſdale, &c. ad deſtructionem ejuſdem Boſci & Cooperti imperpetuum, & ad magnam exilationem ferarum domini Regis: both which preſidents do prove, that a waſte of the foreſt, and a deſtruction, are two different things in ſome ſence.

In libro itinerationis, fol. 616. in waſte 1.

Aſſiſa foreſtæ de Pickring, fol. 24.

Aſſiſa foreſtæ de Pickring, fol. 25. 26.

M. 25. H. 8. fo. 1. pl. 5.

And as at the Common Law, if a tenant for term of years do willingly suffer a Meadow to be drowned with water, whereby the same doth become full of Rushes & barren, or if he do plow up his meadow ground, and make the same arable land, that is said to be a waste: so likewise, if a man, having a Meadow ground, or a pasture, lying within the Kings forest, without the coverts of the forest, and the owner of the same doth plow up his Meadow or pasture ground, that hath not been usually plowed nor sowen before, and so convert the same into tillage, this shall be said to be a waste of the forest.

M. Hesket, in his reading of the Forth, f. 20.

Item, if the people of a whole Township do make waste in the green hue of the forest, the whole Township shall be fined for the same, viz. de villata de C. xx s.

And even as the first forests were not made, nor appointed, but where great woods and coverts were, so to sell or destroy the coverts of the forest, is a waste of the forest, and punishable by the Laws of the forest. And it is to be understood, that there is a great difference between a waste at the Common Law, and a waste by the Forest Laws: For by the Common Law, no man is punishable by an action of waste, but he that hath a particular estate, as tenants for term of life, or for years, and such like, and that is only by him that hath the inheritance in the same: but by the Forest Laws, if he that hath estate of inheritance in the land doth make a waste of the forest in the same, he is punishable therefore, by the King himself only, and not by any other person.

5. The

5. The forfeiture and punishment of such as commit waste within the Forest.

HAving already declared, what a waste of the forest is, it is necessary also to declare, what forfeiture and punishment the Laws of the forest do inflict upon him that doth make a waste of the forest, & how and in what manner he is to be punished for the same. And for that, you shall understand, that if a man do make a waste of the forest by the destroying of any covert or wood, then the whole wood or place so wasted shall be seised into the Kings hands, and so it shall remain until such time that the owner of the same have replebied it, and made his fine for that offence.

Item, if any man do offend in cutting down of bert, or for the wasting or destroying of any covert of the forest, and afterwards he dieth before any presentment be made thereof, yet in this case the King shall be answered for that trespasse or waste, for the place wherein the trespasse or waste was done shall be seised into the Kings hands, and there it shall remain until such time that the heir of the trespasser shall replevy the same, and make his fine for that offence. An. 8. E. 3. Pickering, fol. 22.

Item, if a man do plow a Meadow within the forest, and convert the same into tillage or pasture ground, that hath not been plowed before, without license of the Lord chief Justice in Eyre, and afterwards, before any presentment made thereof, he doth die, then the same Meadow or Pasture, so converted into tillage, shall be seised into the Kings hands, and there it shall remain, until such time that the heir shall replevy the same, and make his fine for that offence: so that, as I do take it, he that doth commit a waste within the forest doth not thereby forfeit the place wherein the waste was made M. Hesket, in his reading of the forest, f. 20.

made or done, but only that the same shall be seised into the Kings hands until that he have made his fine for the same: but if he will not make his fine to the King for the same, then the King shall have the same still, until that the owner thereof, or the heir of the offendor shall make his fine to the King for that offence. And it is to be understood, that there is no certain fine set down for the same by the Laws of the Forest, but only that the same fine is arbitrable at the will and pleasure of the King or his Justice in Eyre, at as much and as little as it shall please the King or his chief Justice in Eyre of the forest. And therefore in an Indictment or presentment made of a waste of the forest, the number of acres that the place wasted doth contain, is always specified and declared: for commonly the Justice in Eyre doth assesse the fine for such a waste, according to the number of acres that the place wasted doth contain; and therefore the value of every acre is also to be set down in every presentment or Indictment of a waste of the forest. And in every Indictment or presentment that is made of any waste of the forest, these things are specially to be remembred.

To value the acres that are destroyed.

1. Who made the waste.
2. What manner of waste the same was.
3. When the same was done.
4. Where the ground doth lie, wherein the same waste was made.
5. In whose tenure the same now is.
6. What number of acres the same doth contain.
7. What every acre is worth to be sold.
8. Whether the same be a waste only, or a waste and destruction of the covert.
9. In whose fee the same is, and in what Parish.
10. Whose inheritance the same is.

6. Where-

6. Whereof it is called Waste.

And whereas we do use to say, a waste of the Forest, it is to be understood, that this word Waste is taken in the same sence, that a spoil is; for a waste of the forest is as much by common intendment, as to say, a spoil of the coverts or pasture of the Forest: for this word Waste is a word chiefly in use amongst Lawyers, and was brought into this Land by the Normans, being derived from the French verb, Gaster, id est, Vastare, to waste: for we English men do oftentime use to pronounce a W. instead of a G. in many words, that we do borrow of the French tongue, as for example, where the French word is Gardien, or Gardienne, we say, A warden; and whereas the French word is, Garderobbe, we say, a Wardrobe; and whereas the French word is, Garronne, we say a Warren, as a warren of Conies, and such like: And so likewise, whereas the French word is, Gast, we say, a Waste, as a waste of the forest, and Gastebois is he that doth waste and spoil woods, Gaster & destruere, id est, vastare, evastare, vel devastare, to waste, to spoil, or consume, and so a waste of the forest is a spoil of the forest; and thus much concerning Waste.

CHAP.

CHAP. IX.

1. *Of Assarts of the Forest.*
2. *What shall be said to be Assarts, or Land Assarted.*
3. *What forfeiture or punishment doth grow to him that doth commit an assart of the forest in his own Woods or lands.*
4. *What forfeiture or punishment doth grow to him that doth make assarts within the Kings demesne woods or lands.*
5. *Whereof the same receiveth the name of assarts.*

1. Of Assarts of the Forest.

EVen as a waste, by the Laws of the forest, is accompted one of the greatest offences or trespasses that can be done to the Vert of the forest, because the same is a felling down, or destroying of the thickets and coberts of the forest, that is to say, the Vert or green-hue, be it great wood or underwood, bushes, thornes, or any covert that beareth green leafe: So likewise an Assart of the forest is the greatest offence or trespasse of all other; and there is none like unto it, that can be done unto the Vert of the Forest. For every Assart of the forest doth contain in it a waste and destruction of the Vert and covert of the forest, and more. For whereas a waste of the forest is but the felling or cutting down of the coberts, which may grow again and become coberts in time, an Assart is the plucking up of those woods by the roots that are thickets or cobers of the forest, to make the same a plain or arable land; so that whereas woods or thickets or any other land is assarted, that land cannot grow again to become

Assart is so called of ad & sero, because of wood grounds, &c. they are converted to be sown. Essarter in French signifies to grub up, Co. 4. Inst. 306. 307.

become coverts; and therefore the ſame, being more then a waſte of the foreſt, is called an Aſſart, as hereafter more at large ſhall be ſhewed.

2. What ſhall be ſaid to be Aſſarts, or Land aſſarted.

But to declare, particularly, what an Aſſart of the foreſt is, and what ſhall be ſaid to be an Aſſart of the foreſt by the Foreſt Laws, I muſt refer my ſelf to the Red book of the Exchequer, where the words are theſe, quod aſſarta vero occaſiones nominantur, quando ſcilicet foreſtæ nemora vel dumeta, paſcuis & latibulis ferarum opportuna, ſuccidunt r, quibus ſucciſis, & radicibus evulſis, terra ſubvertitur & excolitur. Verily, when that the pleaſant woods of the Foreſt, or thick buſhy places meet for the ſecret feeding of the wild beaſts, be cut down, and plucked up by the roots, and the ſame ground made a plain, and turned into arable land, this by the Laws of the Foreſt is properly ſaid to be an aſſart of the foreſt, or land aſſarted. And likewiſe it doth appear by the writ of Ad quod dampnum in the Regiſter, where a man doth ſue for a licenſe to ſell and cut down his woods that are within the foreſt, and to aſſart the ſame, That an Aſſart is, where a man doth fell and deſtroy his woods, and convert the ſoil wherein the woods did grow into tillage: For the words of the writ are theſe, Mandamus vobis, quod per Sacramentum, &c. Inquiratis ſi ſit ad dampnum, ſeu nocumentum foreſtæ noſtræ prædictæ, aut alicujus alterius, ſi concedamus A. quod ipſe arbores in Boſco ſuo de M qui eſt infra metas foreſtæ noſtræ prædictæ, ſuccidere, & eas quo voluerit, cariare, ac commodum ſuum inde facere, & ſolum illud poſtmodum aſſertare, & in culturam redigere, ac parvo foſſato & baſſa haya, ſecundum aſſiſiam foreſtæ includere,

In lib. Rubeo Scaccarii.

Vide Maſter Hesker, fol. 20. accordingly.

Vide le Regiſter, fol. 257.

which

which is, that we command you, that by the oath of, &c. you shall inquire, if it be to the hurt or annoyance of our forest aforesaid, or to the hurt or annoyance of any other man, if we do grant license unto A. that he may fell and cut down the woods and trees that are growing within his wood of M. which is within the limits and bounds of our forest aforesaid, & to carry those whithersoever he will, and to make his profit thereof, and that ground afterwards to assart, and to convert into tillage, and with a small ditch and low hedge according to the Assises of the Forest to inclose the same: So that by this it doth appear, that an Assart of the forest is, whereas a man doth destroy any covert, and convert the same into Tillage: and here by this writ a man may note a great difference between, fencing in, and inclosing of arable land, or pasture, and woods, or coverts; for whereas a man hath woods or coverts within the forest, he may inclose the same round about with high hedges and ditches, to preserve them from the hurt of cattel, until that they be past the danger or hurt of Deer, or other cattel to destroy them, but arable land nor pasture, being within the forest, must not be inclosed with great ditches, nor high hedges, but cum parvo fossato ac bassa haya secundum Assisam forestæ, with a small ditch and a low hedge according to the Assises of the forest: So that, if a man obtain license at the hands of the King, or of his Justice in Eyre, to destroy a covert of wood within the forest, and to assart the same, he may not afterwards inclose the same, being assarted, with great ditches and high hedges, as he might have done before, when that the same was a covert of the forest: But then he must inclose it with a little ditch and a low hedge according to the assise of the forest: So that if a man have woods or underwoods, or any other coverts of the forests, as heath, broom, ferne, or such like,

like, if he do cut them down and pluck them up by the roots, ſo that the buſhy lands where they did grow, or any other woods or coverts of the foreſt be thereby made plain, or arable land, or paſture, then the ſame is called an Aſſart of the foreſt, or land aſſarted, although that the owner of the ſame receibe no profit by it. M. Hesket, fol. 20. and 21.

And it is ſaid by Maſter Hesket, in his learned reading of the Laws of the foreſt: That if a man habe meadow or paſture ground lying within the foreſt, which meadow or paſture ground is inbironed round about with thick coverts of the Foreſt, where the wild beaſts of the foreſt habe their continual haunt and abiding, if the owner or tenant, or other occupier thereof, do convert the ſame meadow or paſture into tillage, then that ſhall be ſaid to be an aſſart of the foreſt or land aſſarted. And the difference between a waſte of the Foreſt, and an Aſſart, is this, that a waſte is but only the felling or cutting down of a covert of the foreſt without licenſe. And an Aſſart of the foreſt is the deſtroying of a covert to make the ſame a plain or arable land. M. Hesket, fol. 20.

3. The forfeiture and puniſhment of ſuch as commit Aſſarts in their own woods or lands in the Foreſt.

The forfeiture or puniſhment that the Laws of the foreſt do inflict upon him that doth Aſſart any woods or lands within the foreſt, is this, that the whole piece of ground that is ſo aſſarted, be it in woods, meadow, or paſture, or any other aſſart of the foreſt, ſhall be ſeiſed into the Kings hands, and ſo it ſhall remain in his hands, until ſuch time that the owner of the ſame habe replebied it, and made his fine to the King

King for that offence: And if any man do assart a covert of the forest, without licence of the King, or of his Justice in Eyre, and afterwards, before any presentment made thereof, he that was the owner of the same that did so assart it, doth die, then the same land so assarted shall be seised into the Kings hands, and there the same shall remain until such time that the heir shall replevy it, and make his fine to the King for that offence: But if neither the heir, nor the owner of the land, will make his fine with the King for this offence, in this case, the King shall still detain the land to him for ever. But M. Hesket saith, that he that doth make a waste, or an Assart of the Forest, doth not thereby forfeit the place so wasted or assarted, but only that the same shall be seised into the Kings hands, until that the owner thereof, or his heir, have made his fine to the King for that offence. And so likewise it doth appear by the Assises of Pickring, of Anno 8. E. 3. that all such lands that were assarted were seised into the Kings hands: but afterwards they were redeemed by the owners thereof, by paying of their fine for the same. And it is to be understood, that by the Laws of the Forest there is no certain fine set down for the same: and therefore such a fine is arbitrable at the will and pleasure of the King, or of his Justice in Eyre, at as much and as little, as the King, or his Justice in Eyre shall in discretion think meet. And in every Indictment or presentment made of any waste or assart of the Forest, the number of acres, and also the value of every acre, what the same is worth to be sold, must of necessity be set down: for commonly the Justice in Eyre doth rate the fines for such offences, by the number of acres, according to the goodnesse and value of the same. And in all Indictments and presentments of wastes and Assarts, there are ten things that are to be remembred, as

M. Hesket, fol. 30.

as already before hath been declared, in the eight Chapter, of waſte, in the fifth Section.

And note, that in the new Aſſiſes of the foreſt of Anno 6 E. 1. articulo 4. it is there ordained and appointed for a Law, Quod ſi quis inventus fuerit in dominico domini Regis aſſertando, vel purpreſturam faciendo, corpus debet protinus retineri: Si autem extra dominicum infra rewardum, debet poni per ſex plegios: ſi autem aliàs inveniatur, debet dupl'icare ejus plegios: ſi tertiò, corpus debet retineri: If any man ſhall be found in the Kings own demeſne woods or lands, aſſarting or making of any purpreſture, his body ſhall be forthwith retained; but if any man ſhall ſo be found aſſarting or making of any purpreſture without the Kings demeſne lands or woods, in the woods or lands of any other man, being within the Regard of the foreſt, he ſhall be detained in ſafe cuſtody, until that he ſhall be delibered by ſix pledges; and if he be found afterwards ſo offending again, then he ſhall be detained in ſafe cuſtody until that he ſhall be delibered by twelbe pledges; and if he ſhall be found ſo offending again the third time, then his body ſhall remain in priſon, until that he habe made his fine with the King for that offence; and ſuch an offender for the third offence is not by the Laws of the Foreſt bayliable by any man, but only by the Lord chief Juſtice in Eyre of the Foreſt, or his Lieutenant in that behalf. Aſſiſa & conſuetudines foreſtæ, artic. 4. Raſtal, titulo Foreſts 21. an. 6. E. 1. cap. 4.

And ſo note the difference between aſſarting of the Kings own woods or lands, and the aſſarting of the woods or lands of other men: that he that is found aſſarting of the Kings demeſne woods or lands within the Foreſt, is to be impriſoned for the firſt offence, without any bail or impriſe for the ſame, until that he hath made his fine to the King for that offence, (except the Juſtice in Eyre only of his eſpecial favour

will

will deliver him upon bail) and he that is found assarting in the woods or lands of any other man being within the Regard of the Forest, he is bailable for the first offence, and for the second offence: but not for the third offence, for then his body shall be imprisoned, as aforesaid, until that he hath made his fine to the King for the same: Except the Lord chief Justice in Eyre of the forest of his special favour will deliver him upon bail, as aforesaid.

Assisa forestæ de Pickring, fol. 15. and f. 18.

It was adjudged in the Assises of the forest of Pickring, in anno 8. E 3. in the case of the Prior of S. John of Jerusalem, that no man may assart or ercolor his woods or lands, that he hath within the Regard of the forest, without the Kings special warrant so to do; and that if any man do assart or ercolor his woods or lands that he hath within the Regard of the Forest, he shall pay a grievous fine unto the King for the same: And if he will have the same to continue, then he may compound with the King, or his Justice in Eyre, to pay unto the King a yearly rent for the same, which must be entred of record at the time of the arrenting thereof.

Assisa forestæ de Pickring, fol. 7. and f. 11.

And likewise, it was adjudged in the Assises of the Forest of Prickring, in the time of Ed. 3. that he that is presented to have assarted or inclosed any land within the forest, out of the Kings demesnes, in his own fee, or in the fee of any other man, he shall make his fine for this offence; and if he will afterwards compound with the King, or the Lord chief Justice in Eyre of the forest, he may continue the same, paying unto the King a yearly rent, which must be entred of record at the time of the arrenting thereof.

In the time of King Ed. 1. and also of King E. 2. and Ed. 3. when the Justices of the Forest did usually hold their Iters, and Justice-seats for Forests, it was no small

ſmall benefit that did yearly increaſe and grow unto the King, by the arrenting of lands that were aſſarted, and of purpreſtures of the Foreſts over and beſides the fines that were paid for them, and other ſuch like treſpaſſes: And thereby the foreſts of the King were then alſo kept in order. But now of late, within theſe hundred years, there have been very ſeldom any Juſtice-ſeat at all kept for Foreſts. And when that there is any kept, the ſame is ſo ſlenderly perſormed, that there is very little, or no good at all done thereby, for any reformation of any abuſe of any matter concerning the Foreſt: for the Records of the proceedings of the Foreſt matters are not orderly kept, nor returned into his Majeſties Court of Exchequer, as heretofore they have been, whereby the rents growing due unto his Majeſty for ſuch aſſarts and purpreſtures of the foreſt, and other ſuch like things, with the fines that are aſſeſſed and not paid, and all bonds that are forfeited unto the King for any matter concerning the Foreſt, might in due courſe of law be levied and gathered to the Kings uſe: For now adays, if it do chance that a Juſtice-ſeat be kept for any one foreſt, the ſame is ſeldom or never finiſhed, but adjourned over until ſome other time, and then it becometh diſcontinued, and ſome few fines, or perhaps none at all, for any offence paid. And then, when the Juſtice in Eyre of the Foreſt doth chance to die, the Records of the Foreſt remaining in ſome private mans hands, and not returned into the Court of the Exchequer, by ſome means or other they are ſmothered, ſo that they do never come to light: and by this means all the treſpaſſers and offendors of the foreſt, for what treſpaſſe or offence ſoever it be, do go free and unpuniſhed, which doth daily animate and encourage offenders in foreſts more and more, and doth alſo diſcourage the good Officers of the foreſt, that have from time to

time carefully discharged their duties in executing of their offices, to see all their pains and labour lost, and to come to so small effect: But if that the Justices of the Forest would duly hold their Justice-seats, and cause perfect Records thereof to be kept; Or else, if they would cause the Records of their proceedings to be returned into his Majesties Court of Exchequer, whereby there might be execution of their proceedings, according to the Laws of the Forest, then the Forest Laws would be better known, and also more regarded then they are now at this day. It is well known, that of late at a Justice-seat holden for some forest that I do know, there were divers men that were conbicted for the making of sundry purprestures in building of houses within the waste soil of the Forest, for the which they did then compound at the same Justice-seat to arrent the same by the year, and afterwards by reason of the death of the Justice in Eyre that then was, the Records of the same Justice-seat were not returned into the Exchequer, nor yet elsewhere now to be found, those rents have never been called for, nor yet paid, but are still withholden from his Majesty: And by reason now that there are no Records of the same to be found, no man doth know what rent the same was; and therefore no doubt it is no small hinderance unto his Majesty that the Records of the Forest have not been duly kept, and returned into the Court of Exchequer, there to remain in perpetuam rei memoriam. But now to return to my former matter again, where I left, having already declared, what forfeiture or punishment the Laws of the Forest do inflict upon him that doth assart his own woods or lands within the Forest.

4. The forfeiture and puniſhment of ſuch as make Aſſarts in the Kings demeſn woods or lands.

I Am now here to declare and ſet down, what forfeiture or puniſhment the Laws of the Foreſt do impoſe upon him, that doth Aſſart the Kings demeſne woods or lands within the Foreſt, without warrant for the ſame: And therefore you ſhall underſtand, that by the new Aſſiſes of the Foreſt, made in An. 6. Ed. 1. it is ordained, Quod ſi quis inventus fuerit in dominico dom. Regis, aſſartando vel purpreſturam faciendo, corpus debet protinus retineri: That if a man be found aſſarting or making of any purpreſture in the Kings demeſne woods or lands, his body ſhall forthwith be attached, and detained in priſon until that he have made his fine to the King for the ſame. But it doth appear by the antient Iters of the Aſſiſes of Pickring and Lancaſter both, that he that doth make an aſſart in the Kings own demeſne woods or lands, being within the Foreſt, ſhall be fined for the ſame at double as much as he ſhall that doth make either aſſart or purpreſture in his own woods or lands: and yet in both thoſe two caſes, the fine for the offence in either of them is arbitrable at the will and pleaſure of the King. But it is a more bolder attempt, or rather contempt, to make an aſſart or purpreſture in the Kings own demeſne woods or lands being within the Foreſt; and therefore worthy to be more ſeverely puniſhed for example ſake, then he that doth commit the like offence in his own freehold: and for that cauſe the Law doth allow him that is taken with the manner, either making of an aſſart or purpreſture in the Kings demeſne woods or lands, no bail for the firſt offence, whereas he that doth the like treſpaſs in his own freehold, or land, is allowed to be bailed for the firſt and ſecond offence, but not for

Aſſiſa & conſuetudines foreſtæ, an. 6. E. 1. artic. 4. Raſtal in Foreſts, 21.

Aſſiſa foreſtæ de Pickring, fol. 35. an. 8. Ed. 3. in caſu Gilberti de Acton.

the third offence. And therefore by this it doth appear that the Law doth much lesse favour the one of them, then it doth the other.

5. Whereof it is called Assarts.

AND thus having already declared, what an Assart of the forest is, and what punishment the Law doth appoint for the same offence, as well in the Kings own demesn woods or lands, as in the woods or lands of any other man: It is therefore now very necessary to speak something, here in this place, of the word Assart, and whereof the same taketh the name of Assart; And for that, you shall understand that this word Assart is an antient English word brought out of Normandy into this Land (by the Conquerer, as it seemeth) and is derived of the French verb Assortir, to make plain, or to furnish, or to trim up any thing: as when any land or ground is full of bushes, woods, or thickets, being barren as it were in not bearing of corn nor grasse, by reason that the same is so overgrown with coberts, then to destroy the same coberts, and to make the place arable land, to bear corn or plenty of grasse, is called an Assart of the forest, of the French verb Assortir, to make plain, or to furnish: for whereas the same was before a thicket of bushes or woods, it is made a plain smooth pasture or arable land; and it is also furnished: for whereas before the same was barren, when the same is so assarted or converted into tillage, then it is furnished with corn or with grasse. And of this French verb Assortir, to make plain or smooth, is derived this barbarous Latine word Assarto, to pluck up by the roots: which word I never read of in any good Writer, but only in Budæus, in his second book de Philologia, where he doth expound this word Assart in this sort,

Budæus in 2. libro Philologiæ.

assar-

aſſartare enim eſt denſas ſilvas eradicare, & in culturam redigere; for to aſſart (ſaith he) is to root up thick woods, and to bring the ſame to tillage: ſo by this appeareth that the word Aſſart is to deſtroy any covert by the rooting up of the ſame, to make it to continue a plain: The French word that is now in uſe for this matter, is Arracher, which is eradicare, or eruncare. In the Regiſter in the Writ of Ad quod dampnum, there the word is Aſſertare, not Aſſartare, as Budæus uſeth the ſame.

CHAP. X.

1. *Of Purpreſtures of the Foreſt.*
2. *What ſhall be ſaid to be Purpreſtures within the Foreſt.*
3. *How many ſorts of Purpreſtures there are.*
4. *What forfeiture or puniſhment there doth grow to him that doth commit Purpreſture within the demeſne woods or lands of the King.*
5. *What forfeiture or puniſhment there doth grow to him that doth commit Purpreſture within his own woods or lands.*
6. *Whereof the ſame taketh the name of Purpreſture.*
7. *What difference there is between* Waſte, Aſſart, *and* Purpreſture.

1. Of Purpreſtures of the Foreſt.

PUrpreſture in a foreſt is a treſpaſſe ſo hurtful and offenſive to the Vert and Veniſon of the ſame, that if there were not certain ſharp Laws to inhibit it, and alſo to puniſh the offenders therein, for example ſake, foreſts would in ſhort time decay, and be

no forests, by reason of Purprestures only: For as a Waste of the forest is a mean to decay the same, by cutting down of the woods & coverts; And an Assart, by destroying of woods, and converting the land of the soil into tillage; so a Purpresture is likewise another special means to decay a forest, by building and new erecting of houses and other inclosures therein: for if it were lawful for every man that is an inheritor of lands or tenements within a forest, to build and erect houses upon the same at his will and pleasure, then every forest would in short time become so populous, and so full of people, and houses, that the wild beasts of the forest could not have any abode or being within any forest, by reason of the multitude of people and houses there: For as the first forests were made in places that were not inhabited with people, and then afterwards by the Kings especial license and favour, some few men were admitted to dwell and inhabit in forests, and so by little and little, in time, forests became populous: But yet by license of the King only, or by his sufferance.

We may read of some Kings of this land, that when they made forests, they did pull down both houses and Churches that were within the same, and so thereby caused an utter depopulation of that place, for the quiet of the wild beasts: Then much more, if by the Laws of this Realm Kings and Princes may pull down Houses and Churches that are already builded, to make forests in such places where they please to have forests; They may, by the same Laws, restrain and forbid all inhabitants, and all those that have lands or woods within forests (that have been antient forests along time) to new erect or build any more houses or buildings then are already builded there, without especial license of the King or his Justice in Eyre: For new erections and increasing of dwelling houses within forests, are:

1. Ad

1. Ad terrorem ferarum, for that the ſight of many houſes in a foreſt is a terror to the wild beaſts of the foreſt.
2. Ad nocumentum Foreſtæ, for that the peſtring of the foreſt with many houſes is noiſome to the foreſt: for that the people and inhabitants will daily deſtroy and ſpoil the bert thereof.
3. Ad ſuperoneratione**m** Foreſtæ, for that by reaſon of many houſes the foreſt muſt needs be ſurcharged with many cattel.
4. Ad exilationem ferarum Foreſtæ, for that the multitude of people and their dogs do cauſe the exile of the wild beaſts from the foreſt.

Then therefore, what can there be in a foreſt that may more decay or hurt a foreſt then Purpreſtures? and the permiſſion and ſufferance of one purpreſture in a foreſt doth cauſe many more purpreſtures to be made, by reaſon of that one: and therefore in the good government, and care of preſerving of foreſts, there muſt be great regard had therein for the avoiding of purpreſtures, leſt that by the tolleration and permiſſion of purpreſtures the foreſts be won ſpoiled and decayed. But now, before that I do ſpeak any more of purpreſtures, it is neceſſary to declare, what a Purpreſture of the foreſt is.

2: What is a Purpreſture within the Foreſt.

AND therefore you ſhall underſtand, that a Purpreſture of the foreſt is moſt properly, whereas any man doth make any manner of encroachment upon the Kings foreſt, be it in building, incloſure, or by uſing of any liberty or privilege, without lawful warrant ſo to do, that is called a Purpreſture of the foreſt. And in Libro rubro Scaccarii, titulo Accidentibus, ita eſt: ſcilicet,

In libro Scaccarii, in titulo de Accidentibus.

Quod purprestura fit interdum per negligentiam Vicecomitis, vel ministrorum regis, vel per continuationem in longa tempora, vel bellicam tempestatem, ut qui habitant propè fundum Coronæ, vel adjacent, aliquam eorundem portionem sibi usurpant, & suis portionibus ascribant: Cum autem per lustrantes Judices per Sacramentum legitimorum virorum compertum fuerit, appretiantur, & Vicecomiti traduntur, unde seorsim respondeat, & hanc dicimus purprestruram, vel occupationem injustam: which in English is thus, In the Red Book of the Exchequer, in the title de Accidentibus, it is written, That purpresture is sometime made by the negligence of the Sheriff, or by the negligence of the Kings Officers or Ministers of the forest; so that by long continuance of time, or by war, those that do dwell neer to any land of the Crown, or that are adjoyning to the Kings land, do unjustly take any portion thereof from the King, and do adde the same to their own land: But when this matter is found out by the diligent examination of the Judges, and by the oath of good and lawful men, then those purpresture or lands that were so taken from the King, shall be appriſed and delivered unto the Sheriff again, whereof he shall specially answer unto the King. And this we call a purpresture, or the wrongful occupation of the land of another man. And although that this place doth rather seem to probe what is a purpresture by the Common Law, then by the Forest Law, yet hereby it is plainly proved, that to make any incroachment upon the King without warrant or good title, is a purpresture by the Common Law, and even so it is by the Forest Law, And Master Herket saith, That if any man take or incroach unto himself any thing that he hath no right unto, that is a purpresture. But it is thought that those words of Master Herket in that place are a little too general: For the

M. Herket, f. 10

taking

taking of any thing that a man hath no right unto, is not alwayes ſaid to be a purpreſture; but the taking away of certain things, and in ſome ſort, ſhall be ſaid to be purpreſture: For here you muſt underſtand Maſter Heskets meaning in theſe words, (take or incroach unto himſelf any thing) as if he had ſaid, take unto himſelf any thing from another man by incroachment; and you muſt alſo underſtand his meaning in this word, (any thing) any lands or liberties: ſo that then by Maſter Heskets meaning, a Purpreſture is where any man doth take from another by incroachment, any land, liberty, or jurisdiction, and doth wrongfully occupy the ſame. And with this agreeth Maſter Ranulphus de Glanvil, a moſt learned Judge of the Common Laws of this Realm, in his Book that he wrote, called a Treatiſe of the Laws and Cuſtoms of England, in the time of King Henry the Second, in theſe words, Dicitur autem purpreſtura vel porpreſtura proprie, quando aliquid ſuper dominum Regem injuſtè occupatur, ut in dominicis Regis, vel in viis publicis obſtructis, vel in aquis publicis tranſvertis à recto curſu, vel quando aliquis in Civitate ſuper Regiam plateam aliquid ædificando occupaverit: Et generaliter, q oties aliquid fit ad nocumentum Regii tenementi, vel Regiæ viæ, vel Civitatis, placitum inde ad Coronam domini Regis pertinet. Verily, ſaith he, it is properly called Purpreſture or Porpreſture, when any thing is wrongfully incroached upon our Sovereign Lord the King, as in the Kings demeſne lands, or in ſtraitning of the Kings highways, or in turning of the common waters from their right courſe, or when any man in building of any thing in a City doth incroach upon the Kings ſtreet or common highway: And generally, as often as any thing is done, which is to the annoyance of the Kings lands, or tenements, or of his highway, or of any City, this is Purpreſture, and the

Ranulphus de Glanvil, in libro 9. f. 71. c. 11.

the plea or handling of this matter doth appertain unto the Crown of our Sovereign Lord the King. And so by this you may perfectly discern and know, what by the Law is or shall be accompted, or taken for a Purpresture.

Assisa Lancastriæ, an. 12. E. 3. fol. 6.

And in the Assises of Lancaster, in anno duodecimo of Edward the Third, it was there adjudged, in the general Eyre of the forest, that the Assises of the forest are, that no man may inclose any ground within the Forest, ad nocumentum ferarum: And that if a man do make any such new inclosures in any land within the Forest, that the same is a purpresture of the Forest. And that if any man have a license to inclose any ground within the Forest, he may not inclose the same, cum alta haya & fossato, nec cum alto pallatio: for if he do, that is contra assisam foreſtæ.

Ass. Lanc. an. 12. E. 3. fol.

And it was there also adjudged, that if a man do build any house within the Forest without license, although that the same be within his own free land, the same is a Purpresture of the Forest: And the judgement of Purpresture is there set down to be this, Quod ipse in misericordia, & quod clausum prædictum prosternatur. And if he that doth make Purpresture, do grant over his land wherein the Purpresture is made, both he and the Grantee shall be amerced for the same.

And note, that it appeareth by the claim of the Abbot of Merival, in anno 12. Edward the Third, in the Assises of Pickring and Lancaster, that within the Regard of any Forest, no man may build any houses or barkaries.

Ass. Lanc. fol. 9. an. 12. E. 3.

And it was also there adjudged, in the case of the Prior of Lancaster, that no man may build any new houses or barkaries within the Forest, nor use Tillage in any new grounds that have not been used to be put to Tillage before, without especial license so to do.

And

And alſo it appeareth there in the ſame Aſſiſes by a claim made by the Prior and Covent of Meribal, that no man may make any buildings within the Foreſts, (except he habe good warrant from the King, or from the Lord of the Foreſt, ſo to do,) for the Abbot, in the caſe aforeſaid, made his claim by grant, that he might make omnimodum commodum ſuum infra Foreſtam, ſine aſſartando, & ſine ædificandò, modis omnibus: But by this it appeareth, by his grant, that to aſſart, and to make any purpreſtures of the Foreſt, were excepted; therefore he might not do either of them.

In Trinity Term, anno 7. Eliz it was clearly reſolved by the moſt part of all the Judges, and the Mu. Counſel, at Serjeants Inne, in the preſence of the Earl of Suſſex, then Lord chief Juſtice in Eyre of all her Majeſties Foreſts on this ſide Trent, That the building of any new houſe within the ſeveral ſoil or waſte of any man within a Foreſt, is a Purpreſture, and annoyance to the Foreſt and Game; And alſo finable, or elſe arrentable for the tolleration or ſuffering of that to ſtand, which is at the judgement and diſcretion of the Lord chief Juſtice in Eyre of the foreſt, or otherwiſe to be plucked down and deſtroyed at his will and pleaſure. The foreſaid Earl of Suſſex, being Lord chief Juſtice in Eyre of all the foreſts on this ſide Trent, and being learned himſelf in the Laws of the foreſt, yet, becauſe that he would be the more perfectly reſolved, what was Purpreſture by the Laws of the foreſt, he cauſed the Judges, as well of the Common Pleas, as of the Kings Bench, and all the Queens learned counſel in the Laws of this Realm, to aſſemble themſelves together at Serjeants Inne in Fleetſtreet, and then there they delibered this their opinion, as aforeſaid; Sir James Dyer being then chief Juſtice of the Common Pleas; who of zeal & favour that he did bear unto the knowledge and learning

Anno 7. Eliz. Dyer, fol. 240. pla. 45.

ning of the Law, did keep a memory of this case, whereby the same came to be Printed in his book of years and terms, for the better instruction of others hereafter. Thus having sufficiently declared and proved, what is Purpresture by the Common Laws of this Realm; and also what is Purpresture by the Laws of the Forest, it is necessary also to declare the Species of Purpresture.

3. How many sorts of Purprestures there are.

AND therefore you shall understand that of those foresaid Purprestures, there are four sorts of them, that is to say,

Purpresture
1. Against the King only.
2. Against the K. and the commonwealth.
3. Against the K. and a common person.
4. Against a common person only.

1. Purpresture against the King only is, whereas any man doth new erect or build any dwelling house or any other house within the forest without license, where there hath never been any house before, although that the same be in his own ground. This is a Purpresture against the King only, and not against any other man, for this is no Encroachment upon any man, but only upon the Kings forest.

2. Purpresture against the King and the Commonweale, is, whereas any man doth new erect a house or Mill upon the Kings highway, or waste soil, within any forest, by reason whereof the common passage of his Subjects is hindred: This is a Purpresture against the King, and also against the Commonweale. In like manner it is, when a man doth new erect a house or a Mill in his own land within the forest, which is to the hindrance or annoyance of the common passage of the Kings

Kings Subjects, this also is a Purpresture against the King and the Commonweale.

3. Purpresture against the King and a common person, is, whereas any man hath certain land inclosed, lying within a Forest, adjoyning upon the waste soil of the Lord of a Manor, and the owner of the same land incroacheth upon the waste soil of the said Lord of the Manor, and by removing of his hedge taketh in part of his waste soil, and so wrongfully enlargeth his own ground, this is a Purpresture of the Forest against the King, to new inclose land that was not inclosed before: and this is also Purpresture against the Lord of the Manor, for as much as parcel of his waste soil is wrongfully taken in and inclosed.

4. Purpresture against a Common person only, is, whereas a man having an antient dwelling house, or an other house within the Forest, and by inlarging of the same house, he doth incroach upon the land of another man, this is said to be a Purpresture against a common person only, for that the same, being an antient house before, and might lawfully stand there, the King hath little wrong by this incroachment. And so note, that Purprestures in the Forest are in these four sorts.

And so you may see, that where any man doth wrongfully incroach any thing unto himself within the Forest, either upon the King, or upon any other person, the same is a Purpresture. And if any man without good warrant do take upon him any Jurisdiction or Franchise within the forest, that is also a Purpresture of the forest.

And if any man do hold a Fair or Market without the grant of the King, or lawful prescription, that is also a Purpresture; and if any man do take in, or inclose any of the Kings waste soil within the Forest, that is also a Purpresture; and if any man do build any Swine-

cote

cote or Yobel, upon the Kings waste soil, or the waste soil of any other man within the Forest, that is also a Purpresture of the Forest.

4. The forfeiture and punishment of such as commit Purpresture in the demesne woods or lands of the King.

The forfeiture and punishment that the Law of the Forest doth appoint for such offenders as do make any purpresture in the Kings own demesne woods or lands within the Forest, is, as before already hath been declared for assarts, which is, that if any man be found making of any Purpresture in the Kings demesne woods or lands, that then his body shall be forthwith detained in prison without bail or mainprize, until that he hath made his fine with the King for the same offence, which fine is arbitrable at the will and pleasure of the King. And as M. Glanvil saith, in his 9. Book and 11. Chapter. Et qui per Juratam ipsam, aliquam hujusmodi fecisse Purpresturam convictus fuerit, in misericordia domini regis remanet de toto feodo quod de eo tenet, & quod occupavit reddet, which is, that he which shall be convicted by a Jury to have made any such Purpresture upon the King, he shall remain for the same at the Kings mercy, for his whole fee that he holdeth of the King, and the Purpresture that he hath made shall be yielded to the King also.

Assisa Forestæ, An. 6. Ed. 1.

Glanvil, in libro 9. f. 72. c. 11.

And so he, that doth make a Purpresture within any of the Kings demesne woods or lands within the Forest, is fineable for the same at the Kings will and pleasure, and not at any certain fine. And you must needs think, that the Law intendeth a very grievous fine to be laid upon him that will attempt to make any Purpresture upon the King in his own demesne lands or

or woods; and therefore the fine for a Purpresture is aggravated and increased according to the quality and quantity of the offence; and besides that, he that is so fineable, he shall yield the place upon the which the Purpresture is made, to the King, to whom in right it doth belong and appertain.

5. The forfeiture and punishment of such as commit Purpresture in their own woods or lands.

The forfeiture and punishment that the Laws of the Forest do inflict upon him that doth make any Purpresture in his own woods or lands within the Forest, as before in Assarts hath been already declared, is, that he that is found making of any Purpresture, out of the Kings demesne woods or lands, within the regard of the Forest, his body shall be attached and detained in prison, until that he be delivered by six pledges: and if he shall be found offending so again the second time, then his body shall be attached and detained in prison, until that he shall be delivered by twelve pledges: and if he shall be found offending so again the third time, then his body shall be attached and detained in prison until that he shall habe made his fine with the King for that offence; and in this case, the offender is not bailable by the Law, by any man, but only by the Lord chief Justice in Eyre of the Forest, of his special favour and grace. Assisa & consuetudines foreſtæ, An. 6. Ed. 1.

And in this case also, the fine is uncertain for such Purpresture, and arbitrable at the will and pleasure of the King, according to the quality and quantity of the offence.

And this note, that for every Purpresture that a man doth make in his own lands or woods, that he hath within the forest, as in building up of any house, Dyer 140. pla. 45.

whereas

whereas there hath not been any before, there the judgment is twofold, that is to say, first, that he shall pay a fine to the King, for the making of the same Purpresture, according to the quality and quantity thereof: And secondly, that the same house or purpresture so made shall be pulled down again, or else to pay yearly a certain rent unto the King, for suffering of the same to remain still, which is at the choice and discretion of the Lord chief Justice in Eyre of the forest.

6. Whereof it is called Purpresture.

M. Glanvil, fol. 71. lib. 9. cap. 11.

THis English word Purpresture, which M. Glanvil calleth Purprestura, or Porprestura, in Latin, being but a new made Latin word, is derived from the old French word Pourpris, which signifieth, to take from another, and to inclose unto himself, or to incroach upon another. There is no such word in use in the Latin tongue as Purprestura is, but only amongst Lawyers, which did first frame that Latin word of the foresaid French word Pourpris; for that which is called Pourpris in French, the Latinists do call Conseptum, an inclosing together, or an inclosure; and by usage, this word Purpresture amongst Lawyers in the general sence is now taken for any thing which any man by wrong hath incroached upon another, and by inclosure or usage appropriated unto himself.

7. The difference between Waste, Assart, and Purpresture.

SOme men do hold an opinion, that the difference between Purpresture and Assarts is, that Purpresture is made upon the woods or lands of the King only, and Assarts is made in the woods or lands of other men:

men: but that is not ſo, for a man may make Purpreſture and Aſſarts alſo, as well in the woods and lands of the King, as in the lands and woods of other men: And é contrario, Purpreſture and Aſſarts may be made as well in the woods and lands of other men, as in the woods and lands of the King. And that is proved by the words and meaning of Charta de Foreſta, articulo 4. whereas the King by the ſaid Charter doth grant, that all Archbiſhops, Biſhops, Abbots, Priors, Earls, Barons, Knights, and Freeholders, which have their woods within Foreſts, that they ſhall have and enjoy their own woods that they have within Foreſts, in ſuch ſort as they had them at the time of the firſt Coronation of King Henry the Second, which was before the making of the Charter. Charta de Foreſta, artic. 4.

And the King doth alſo, there, by the ſame Charter, further grant unto them a general pardon for ever, for all Purpreſtures, Waſtes, and Aſſarts, made and done before the making of the ſaid Charter in their own woods; for the words are there, Habeant Boſcos ſuos, that is to ſay, they ſhall have their own woods, &c. And afterwards the words of the pardon are, quod quieti ſint imperpetuum de omnibus Purpreſturis, vaſtis, & Aſſartis factis in illis Boſcis, which is, that they ſhall be quiet for ever of all Purpreſtures, Waſtes, and Aſſarts, which are made or done in their own woods within the Foreſt. Then both Purpreſtures and Aſſarts may be made in the woods and lands of other men, as well as in the woods and lands of the King, which is contrary to the opinion of M. Treherne, and alſo of M. Archer, in their readings of the Laws of the Foreſt, which I do greatly marvel at: for it doth alſo moſt plainly appear by the aſſiſes and cuſtoms of the Foreſt, which were made and eſtabliſhed in anno 6. E. 1 articulo 4. in theſe words, Si quis inventus fuerit in dominico domini Aſſiſa & conſuetudines foreſtæ, artic. 4. Vide Raſtals abridgment of ſtatutes, in Foreſts, 21.

regis, assartando vel Purpresturam faciendo, Corpus debet statim retineri, sin autem extra dominicum, infra rewardum, debet poni per sex plegios, & si aliàs inveniatur, debet duplicare ejus plegios, si tertiò, corpus debet retineri: If any man shall be found in the Kings demesne woods or lands assarting or making of any Purpresture within the Forest, his body shall be forthwith retained in prison for that offence: but if any man be found assarting or making of Purpresture out of the demesne woods or lands of the King, in any other mans woods or lands, being within the regard of the forest, then he shall be delivered by six pledges; and if he shall be found offending again in such sort the second time, then he shall be delivered by twelve pledges: but if he shall be found so offending again the third time, then his body shall be forthwith detained in prison for that offence without any bail or mainprise, &c. By which words, and meaning of the Law it self, it doth appear, first, that both Assarts and Purpresture may be made and done in the demesne woods of the King: and therefore the Statute hath appointed an especial manner of proceeding and punishment, only for such Assarts and Purpprestures as are made and done in the Kings own woods and lands, which is differing from the proceeding and punishment appointed for Assarts and Purpprestures made in the lands and woods of other men: and secondly, that both Assarts and purpprestures may be made and done in the woods and lands of other men, as well as in the woods and lands of the King; and therefore the same Statute hath also there set down a manner of proceeding and punishment for Assarts and purpprestures that are made and done in the woods and lands of other men, differing from the proceeding and punishment appointed for such Assarts and purpprestures as are made and done in the Kings demesne woods and lands, Ergo,

it

it is not the land of the King, nor the land of any other man, that doth make the difference between Assarts and purpresture, seeing that both Assarts and purpresture are made as well in the woods and lands of the one as the other, and so (to conclude) in both: but surely the true difference between Assarts and purpresture is, that purpresture is a wrongful Encroaching of a new thing, that was not before, upon the King or a common person: and Assarts is, the converting of any covert of the forest into arable land, as already before hath been declared. And because that every purpresture of the Forest is fineable at the will and pleasure of the King, according to the quality and quantity of the same offence; therefore to the end that the manifest truth may in every point the better appear, it is necessary, that in all presentments and indictments of any manner of purpresture that shall be made or done within the forest, they do contain the certainty of these ten points hereafter following:

1. Who made the Purpresture.
2. What manner of Purpresture the same is.
3. When the same was done.
4. Where the ground doth lie wherein the Purpresture is made.
5. In whose tenure the same now is.
6. What quantity of ground the same doth contain.
7. What the same is worth by the year to be letten.
8. Whether that the same Purpresture be made upon the soil and inheritance of the King, or upon the soil of any common person.
9. In whose fee the same is, and in what parish.
10. Whose inheritance the same is.

CHAP. XI.

1. *Of Agistment, and what Agistment is.*
2. *Of the time of Agistment of the Kings Woods and lands.*
3. *Who shall Agist the Kings woods and lands.*
4. *Of the time of Agisting of other mens woods and lands.*
5. *Who shall Agist the woods and lands of other men.*
9. *Whereof the same taketh the name of Agistment.*

1. Of Agistment, and what Agistment is.

IN most places within this Realm, where the King hath any Forests, he hath also within those Forests certain woods and lands that are his own demesne woods and lands, which are always kept inclosed, besides those which are of the Kings waste soil of the Forest, which are not inclosed, but do lie open for common for the Inhabitants of Forests. For the better rule and Government of which said places, and to the end that the King may take the benefit and profit that may any way arise and grow by the same, he hath certain meet Officers in every Forest to take charge thereof, and which are answerable unto the King, as well for the ordering and disposing of the same, as also for the money and profit that shall arise or any ways be made thereof, which Officers are called the Kings Agisters of his forest. These foresaid Officers do continually attend upon the Kings woods and lands, and do receive and take in the beasts and cattel of every person, being an inhabitant within the forest, that may for their money have common of herbage there, for such beasts as

are

are commonable within a foreſt: and this manner of taking in of cattel, to paſture or feed by the week, or by the moneth, or otherwiſe, is called agiſting of beaſts or cattel: and the common of herbage that they have there for their beaſts, is called Agiſtment. But it is to be underſtood, that Agiſtment is, moſt properly, the common of Herbage, of any kind of ground, or land, or woods, or the money that is received or due for the ſame. And Maſter Hesket, in his Reading, of the Laws of the foreſt, ſaith, That the paſture or common of Herbage of any kind of ground, or the money that is taken for the ſame, is properly called Agiſtment. And alſo it doth appear by the book of Entries, in the title of Treſpaſs, (where one man brought an action of Treſpaſs againſt another, for the breaking and entring into his cloſe in Dale, and for the ſpoiling and eating up of his paſture and herbage there, with certain cattel; and the defendant pleadeth, that, as to the breaking of the cloſe, he is not guilty: and, as to the ſpoiling and eating up of his paſture in the ſaid cloſe in which the ſaid Treſpaſs is ſuppoſed to be done, he ſaith, that one I. S. was ſeiſed of the ſame cloſe in fee at the time of, &c. and that he by the appointment of the ſaid I. S. did put his ſaid cattel, ſcilicet, his Kine, Oxen, &c. into the ſame cloſe to Agiſt, paying unto the ſaid I. S. for the Agiſtment of every beaſt there, from, &c. three half pence for every week, for their Agiſtment) that as well the herbage and paſture of the ground and ſoil, as alſo the money for the ſame, is called Agiſtment.

M. Hesket, f. 43

In libro Intrationis, fol. 549. in tit. Treſpaſs. in Agiſtment 1.

And it doth alſo appear, in the book of Entries, in Titulo Debt, where a man brought an action of debt againſt another man, for the Agiſting of his cattel in his land, that as well the paſturing of cattel, as alſo the money for the ſame, is called Agiſtment, or money for Agiſtment: and likewiſe, in the 22. Aſſiſarum, it is declared

Vide librum Intrationis.

Fol. 149. in the general title of debt, in the diviſion of Agiſtment.

In libro Assisar. 22.pla.84. Vide quoque 44.E.3. fol. 25. pla. 38. Dyer, fol.80. pla. 56.

clared by Mombray, Banke, and Thorpe, what Agistment is; where they say, that if a man have common by a specialty in a certain place, and he hath no cattel of his own to common, there he may not Agist other mens cattel, there to use his common; so that thereby it is declared what Agistment is. My Lord Dyer reciteth a case, that the Bishop of Lincoln made a Lease unto one B. (and caused the same to be confirmed with the Chapter Seal) of the herbage and Agistment of Stow Park; and he surcharged the Park with so many cattel, that the Deer could have no feed there, by reason of Agisting of other cattel.

But here it is to be noted, that those that have right to common within the waste soil of the forest, and to Agist their beasts and cattel there, they may not have Agistment for all manner of beasts and cattel, but only for such beasts and cattel as are commonable, but not for Geese, Goats, Sheep, or Swine, as hereafter in the Chapter of Common shall be declared.

2. Of the time of Agistment of the Kings woods and lands.

THe time of taking of Agistment for all manner of beasts and cattel, that are commonable within the forest, in the Kings demesne woods, lands, and pastures, for herbage only, doth always begin fifteen days before Midsummer-day, and doth last until Holy-Rood-day, and then the same doth end. It doth appear by the Charter of the forest, in these words, Quod tertium Swanimotum teneatur initio xv. dierum ante festum Sancti Johannis Baptistæ, quando Agistatores nostri conveniunt pro feonatione bestiarum nostrarum: That the third Swanimote shall be holden in the beginning of fifteen days before the feast of Saint John Baptist, when that our Agistors

Charta de foresta, artic.8.

Agiſtors do meet together for the fawning of our wild beaſts: and this Swanimote is held and kept at this time for two cauſes, whereof the one is, that at this Court there may be order taken throughout all the foreſt, that diligent watch and ward be kept for the preſervation of the wild beaſts in their time of fawning, being fifteen days before Midſommer, and fifteen after: which time is called the fence moneth. The other cauſe is, for that the Agiſtors of the Kings foreſt do then begin to Agiſt the Kings demeſne lands, woods and paſtures for herbage, and then they do receive and take into the Kings lands, woods, and paſtures, all manner of beaſts and cattel that are commonable within the foreſt for herbage. And this ſort of Agiſting of beaſts commonable doth continue until the beginning of fifteen days before Michaelmas, which is always upon Holy-Rood-day, and then the time of graſs endeth, and ſo doth alſo the time of Agiſtment of the Kings demeſne woods, lands, and paſtures for herbage. For, in the beginning of fifteen days before Michaelmas (which is upon Holy-Rood-day) then the next Swanimote for the foreſt is to be holden, as it doth appear by the Charter of the foreſt, in theſe words; Nullum Swanimotum de cetero teneatur in Regno noſtro, niſi ter in anno, videlicet, in principio xv. dierum ante feſtum Sancti Michaelis, quando Agiſtatores noſtri conveniunt ad Agiſtandum dominicos Boſcos noſtros: From henceforth no Swanimote within our Realm ſhall be holden oftener then three times in the year; that is to ſay, in the beginning of fifteen days before Michaelmas (which is upon Holy-Rood-day) when our Agiſtors of our foreſt do meet together for the Agiſting of our demeſne woods: ſo that at this Swanimote, when the Agiſtors have done Agiſting for herbage, then they do receive all their money for Agiſtment of her-

Charta de foreſta, artic. 8.

bage in the presence of the forresters and berderers, so that they may record the same in the berderers Roll: and at this Court at Holy-Rood-day, then the Agistors do begin to Agist the Kings woods. And whereas before they did Agist the lands, woods, and pastures for herbage only, now they do begin to Agist the woods for mast: And whereas the other Agistment for herbage was for beasts commonable only, this agistment is for beasts not commonable, that is to say, for Swine and Hogs. And this Agistment doth begin at Holy-Rood-day, that is, fifteen days before Michaelmas, and doth continue forty days after Michaelmas, which is about the feast of Saint Martin the Bishop, in Winter. And then the next Court of Swanimote is to be holden, as it doth appear by the Charter of the forest, in these words, Et circa festum Sancti Martini in hyeme, quando Agistatores nostri debent recipere pannagium nostrum: About the feast of Saint Martin the Bishop, in Winter, when that our Agisters shall receibe our pawnage; so that, as the Kings Agisters do begin to take Swine and Hogs into the Kings demesne woods, to Agist the same, and to feed upon the mast there, at the Court of Swanimote holden upon Holy-Rood-day: so likewise at the next Swanimote after, which is to be holden at the feast of S. Martin the Bishop, in Winter, when that the time of Agisting of Hogs and Swine in the Kings demesne woods and lands is ended, then the Kings Agistors do likewise in the presence of the forresters and berderers receibe their money for the same (which money for the Agisting of woods is called pawnage) and then the same is to be entered in the berderers Roll. And so note, that the time of Agisting of the Kings demesne lands, woods, and pastures, for herbage only, doth begin upon Saint Edmonds day, being fifteen days before Midsommer-day, and doth end fifteen days before Michaelmas-day, which

Charta de forestâ, artic. 8.

which is upon Holy-Rood day: And the time of Agiſting of the Kings demeſne woods for maſt only, which is called the time of pawnage, doth begin upon Holy-Rood-day, which is fiftéen days before Michaelmas-day, and doth end three days before the feaſt of Saint Martin the Biſhop, in Winter. And this is to be noted, that when the Foreſters, Verderers, and Agiſtors of the Kings foreſt do perceive that it is time to agiſt the Kings demeſne woods and lands for herbage, and likewiſe for pawnage, then they muſt informe the Kings Lord chief Juſtice in Eyre of the foreſt thereof, and know his will and pleaſure, what he will have done therein; and after true Certificat unto him made of the certainty of every thing, the ſaid Lord chief Juſtice in Eyre will direct his Commiſſion unto the foreſaid Foreſters, Verderers, and Agiſtors, ſignifying thereby his will and pleaſure what they ſhall do, and how, and in what manner they are to proceéd in agiſting of the Kings demeſne woods and lands, and according to that commandment, and the tenor of their Commiſſion, they ſhall proceéd to make their agiſtment: which letters of Commiſſion they ſhall return again before the ſaid Lord chief Juſtice of the foreſt, at the next Juſtice-ſeat to be holden for the ſame foreſt, with a true certificat, how they have executed the ſame in every point, as it doth appear by the aſſiſes and cuſtoms of the foreſt, in theſe words: Sciendum, quòd tempore pannagii, quando Agiſtamentum debet fieri, debent foreſtarii, viridarii, & Agiſtatores aſſenſum intimare Juſticiariis foreſtæ domini Regis, & inquirere voluntatem ſuam, & fiat Agiſtamentum tam in dominicis haiis & boſcis, quam in foreinſecis, & ſecundùm mandatum ſuum & tenorem literarum, debet fieri Agiſtamentum, quas literas debent habere coram Juſticiariis de foreſta prox, itinerantibus: Know ye that in time of pawnage,

Aſſiſa & conſuetudines foreſtæ, artic. 14. Raſtal, in titulo foreſt. 21.

nage, when the Agistment ought to be made, the Forresters, Verderers, and Agistors shall crave the assent of our Justices of our forest, and to know their wills and pleasures; and then the Agistment shall be made, as well within the demesne hedges and woods, as without: and this agistment shall be made according to their commandment, and tenor of their letters; which letters they shall have before the Justices of the forest, at the next Court of Justice-seat to be holden for the same forest.

3. Who shall Agist the Kings woods and lands.

Also therefore the Kings demesne woods and lands must always be agisted by the Kings Forresters, Verderers, and Agistors, as it doth appear by the Assises of Henry the Second, called the Assises of Woodstock, in these words: Item Rex præcipit, quòd in quolibet comitatu in quo habet venationem, ponantur duodecim milites ad Custodiendum venationem suam, Et viridarii cum forestariis & quatuor militibus; ad Agistandum Boscos suos, & ad recipiendum pannagium suum: The King commandeth, that in every County in which he hath a forest and benison, that there be twelve Knights appointed to keep his benison in the same, and that his Verderers, with the Forresters, and foure Knights called the Agistors, shall agist his woods and pastures, and also receive his pawnage: so that, by this it appeareth, that the agisting of the Kings demesne woods and lands must be made by the Verderers, foresters and agistors, that is to say, with their consents and privity; and for that cause the Swanimote Courts were appointed by the charter to be holden at such days, when the time of agisting the Kings demesne woods and lands for herbage do begin, to the end that all those Officers

Assisa Forestæ facta apud Woodstock, artic. 8.

Officers might there meet, and joyn together about it: And likewise, when the same doth end, that those Officers might there also meet for the receipt of the Kings money for such agistment; And even in like manner, for the agisting of the Kings woods, and for the receipt of his pawnage money: so that such agistments of the Kings demesne woods and lands, being made in this order, with the full assent and privity of the Foresters and Verderers, they may inrol the same in the Verderers Roll, to agree with the Roll, and with the accompt and reckoning of the Agisters. For, the Verderers Roll of the Swanimote Courts is the Kings Record, whereby to charge the Agisters of the King for the receipt of his money. For, the Agisters of the Kings forest are only to receive all the money for the agistment of the Kings demesne woods and lands themselves, and they are only chargeable to the King, to answer him for the same; as it doth appear by the Assises of the forest of Pickring, anno 8 E. 3. whereas it was adjudged as followeth, videlicet, And as concerning the Agistors of the Kings demesne woods and lands, Every Agistor within the Kings forest must bring before the Lord chief Justice in Eyre of the forest, at the Justice-seat, a true and a just accompt, what money he hath received for any Agistment or pawnage of the Kings woods and lands. And the form of the Entry thereof is thus, Rogerus M. unus Agistatoriorum illius forestæ Respondebat de Agistamento Herbagii de Eastwood 3 li. 4 s. Et de pannagio Porcorum de Eastwood 23 s. 4 d. And it doth likewise appear by the Charter of the forest, in these words, Et circa festum sancti Martini in Hyeme, quando Agistatores nostri debent recipere pannagium nostrum; one of the three Swanimotes is appointed to be holden about the feast of Saint Martin, in Winter, when the Kings Agistors shall receive the Kings pawnage: so that, although

Assisa forestæ de Pickring, fol. 7. 8. 9. an. 8. E. 3.

Charta de foresta, artic. 8.

though the Agisting of the Kings demesne woods and lands must be made by the Foresters, Verderers, and Agistors, yet the Agistors only are to receive the money for Agistment and pawnage; and therefore they only are answerable to the King for it, and not the Verderers, nor the Foresters; for the Verderers are answerable to the King but only for the keeping of the Kings Records of such matters concerning the forests.

M. Hesket, fol. 21. in his reading of the forest. Assisa Forestæ de Pickring, fol. 16.

And if any man that is a stranger, dwelling without the bounds of the Forest, do drive his beasts or cattel into the forest, and Agist them in the Kings demesne woods or lands there, without the license or privity of the Kings Officers of the forest, or other good authority thereunto, then the beasts so Agisted shall be taken by the Foresters, and Agistors, and appraised, and then delivered unto the Verderers, to answer unto the King the value thereof, for such beasts are forfeited.

But if an inhabitant within the bounds of the forest do Agist his beasts in the Kings demesne woods or lands that are within the forest, without any agreement with the Kings Officers of the forest, in this case, the beasts so Agisted are not forfeited, but the Offender is to make his fine with the King for that offence. And as M. Hesket and M. Treherne do affirm, such an offence is determinable before the Verderers in their Courts of attachments.

M. Hesket, fol. 23. M. Treherne fol. 8.

Concerning the Agisting of such beasts and cattel as are commonable within the Kings waste soil of the Forest, it is a matter fitter to be handled in some other place then here; and therefore, if you desire to be fully satisfied of either particular point thereof, you shall repair unto the Chapter of Common being the fourteenth Chapter in this Book: but yet, nevertheless, because that common of herbage is a matter of Agistment, it shall not be amisse to speak something, here in this place, con-

concerning the Agisting of beasts and cattel within the waste soil of the Kings forest: and for that, it is to be understood, that no man may Agist his beasts or cattel within the Kings waste soil of the forest, but he that is an inhabitant within the forest, or, that hath common appendant, or common appurtenant, within the forest, by reason of some land, that he hath lying within the forest. And if a man, that doth dwell within the forest, and may common within the waste soil of the same with his own beasts and cattel, will take the beasts of other men that are strangers, to Agist them in the waste soil of the forest, this is fineable to the King; and the form of the Entry of the Record is thus, Item presentant, quod A. B. Agistat omnia averia sua in mora de F. infra forestam ad dampnum domini Regis, & ad nocumentum ferarum, Et nesciunt quo warranto; Ideo præceptum est vicecomiti, quòd venire faciat eum: Et postea testatum est per ministros forestæ, quòd ipse nihil habet infra forestam: Ideo pro Agistamento prædicto, in misericordia, & remaneat Agistamentum in manu domini Regis: and, even the like case, and the like Entry there is of the Prior of S. Johns, for Agisting of the cattel and beasts of strangers within the forest of the King, ad nocumentum ferarum, & ad dampnum domini Regis, & nesciunt quo warranto, Ideo, &c.

Assisa Forestæ de Pickring, f. 10. An. 8. E. 3.

Assisa forestæ de Pickring, fol. 10.

4. Of the time of Agisting of other mens woods and lands.

HAving sufficiently already declared the time of Agisting of the Kings demesne woods and lands, and who shall Agist them, and in what manner they shall be Agisted, it is likewise requisite, here in this place, to declare the time of Agisting the woods and lands of other men, and also who shall Agist the woods and lands of

of other men being within the regard of the Forest. And therefore you shall understand, that every man which hath any woods or lands within the Regard of the Forest, may Agist them for the herbage only, with his own beasts and cattel, at all the times of the year convenient, at his own will and pleasure; so that the woods and springs in them be well and carefully preserved to grow again for coverts of the forest: for, by the Laws of the Forest (as I do take it) there is no certain time appointed or prescribed for men that have woods or lands within the forest, to Agist them with their own beasts, that are commonable for the herbage thereof, but that they may Agist them at any time when they please, according to the tenor of the Charter of the Forest, in these words: Unusquisque liber homo Agistet boscum suum in Foresta pro voluntate sua, & habeat pannagium suum: Every freeman may Agist his own lands and woods which he hath within the Forest, and also he may take the pannage of them, at his own will and pleasure. By this Grant it appeareth, that men may Agist their woods and lands for the herbage, and also for the Pannage, that is, for the Mast of the trees, Pro voluntate sua, at their own pleasures, and that is to be understood at any time when the owners of them will. But yet, here in this Case, it is to be noted, that if any have woods or hedg-rowes adjoyning or lying nere unto the Kings demesne woods, then the owner thereof may not Agist such woods or hedg-rows with any Swine or Hogs, until such time that the King have Agisted his own demesne woods; and that is, because that when the King hath agisted his own woods, then the Hogs nor Swine that are agisted in those woods and hedg-rows that are neer adjoyning unto the Kings own demesne woods and hedg-rows, cannot prejudice nor hinder the Kings Agistment:

Charta de foresta, artic. 9.

ment: and therefore, after that the Kings demeſne woods and hedg-rows be Agiſted, the men that have woods and hedg-rows adjorning unto the Kings demeſne woods within the Foreſt, may agiſt them with their Swine and Hogs, as many as can conveniently be agiſted there, but not before, as it doth appear by the Aſſiſes and cuſtoms of the Foreſt, in theſe words, Si quis habuerit Boſcum juxta dominicum boſcum domini regis, licitum eſt ei, poſtquam dominicæ hayæ Agiſtatæ ſunt, habere tempore pannagii, tot porcos, quot Boſcus per viſum foreſtariorum, viridariorum, regardatorum, Agiſtatorum, & aliorum proborum hominum, poſſit pati: Et hoc fiat de exitu porcorum: If any man have woods neer unto the demeſne woods of the King, it ſhall be lawful for him, after that the Kings demeſne woods and hedg-rows are agiſted, to have in the time of pawnage ſo many Swine as the wood may ſuffer, by the view of the Foreſters, Verderers, Regarders, Agiſtors, and other lawful men: and this ſhall be done of the profit of the Swine. Wherefore it is to be underſtood, that men may agiſt their woods and lands that they have within the Regard of the Foreſt for the herbage thereof, with their own beaſts and cattel, at any time they will.

Aſſiſa & conſuetudines foreſtæ, art. 13. Raſtal, in titulo foreſt. 21.

And alſo men may agiſt their woods that they have within the regard of the Foreſt, with Swine and Hogs for the Maſt thereof, which is called pawnage, at any time when they will in the time of pawnage: (certain woods that do lie and adjoyn neer unto the Kings demeſne woods and hedg-rows only excepted, which may not be agiſted, until that the Kings demeſne woods and hedg-rows be agiſted, which is about the feaſt of Saint Martin the Biſhop, in Winter:) And then they may alſo agiſt ſuch woods at their pleaſure. But no man, that hath woods or lands within the regard of the Foreſt, may

In Clameo abbatis de Ryval Itin. de Pickring, fol. 165. 10. E. 3.

may agist them with the cattel of other men or strangers, for the herbage thereof, except that he have a special licence so to do; for, if he do the same, it is fineable at the Justice-seat, notwithstanding the words of the Charter of the Forest, Unusquisque liber homo Agistet Boscum suum, &c. which is, that every free man may Agist his own woods, and his own lands that he hath within the Forest, at his own will and pleasure, and he shall have the pawnage thereof; but yet, this must be understood, that they must agist their own lands, and their own woods, with their own beasts, and their own cattel, for the herbage only; for it seemeth that they are restrained by the Forest Laws to agist their woods or lands within the regard of the forest, for the herbage thereof, with the beasts or cattel of other men, or strangers; but they may agist their woods and hedgrows within the forest, for the pawnage thereof, with the hogs or Swine of other men and strangers, as well as with their own hogs or Swine, as it doth appear by the assises of the forest, in these words, Licitum est ei, postquam, &c. it shall be lawful for him that hath woods within the regard of the forest, after that the Kings demesne woods are agisted, to have in those woods, in the time of pawnage, so many Swine as the wood may suffer, by the view of the Forresters, Verderers, Regarders, and Agisters, and other lawful men; and then it doth follow, Et hoc fiat de exitu porcorum, and this may be done of the profit of the Swine, which is to be understood by the receiving of money for the pawnage of them. And likewise it doth appear by the Charter of the Forest, in these words, Unusquisque liber homo, &c. every freeman may agist his wood that he hath within the Forest, at his own will and pleasure, Et habeat pannagium, and may also take the pawnage; and this word Pawnage is here understood for the mo-

Charta de foresta, artic. 9.

M. Hesket, f. 16. Assisa Forest. de Pickring, f. 166.

Assisa & consuetudines Forestæ, artic. 13.

Charta de foresta, artic. 9.

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ney for the mast; and so then he that is a freeman, and hath woods within the Forest, he may agist his woods, and receive money for the agisting of them also, that is to say, the pawnage, as hereafter more at large shall be shewed in the Chapter of pawnage. But such liberty is not given, by the Charter of the Forest, to men to Agist their lands and woods that they have within the forest, for the herbage thereof; for, if it were, then men would agist their lands and pasture, so bare, with the cattel of strangers, that the Deer should thereby be clean banished out of the forest for want of food.

5. Who shall Agist the woods and lands of other men.

The words of Charta de Foresta, articulo quare, Unusquisq; liber homo Agistet Boscum suum, &c. Every freeman that hath any woods or lands within the Regard of the Forest of his own in fee simple, fee tail, for term of life, or for years, in his own right, or in the right of his wife, or in the right of any other, be himself, his servant, factor, or tenant, may agist his woods, and his lands, as well for the herbage thereof; as also for the pawnage, with such beasts, and in such sort, at such times, and in such places, as already before hath been declared. But a man may not agist goats, or sheep, in his own woods nor lands within the regard of the Forest, although that they be his own beasts or cattel, without license so to do, Quia prebent exilium ferarum Foreſtæ, for they do taint the pasture where they feed, so that the wild beasts of the Forest will not feed where they do use to feed, and by reason thereof they do cause the exile and banishment of the wild beasts of the Forest from every place where they are.

Charta de foresta, artic. 9.

Assis. For. in Clameo Burgiens. Lancast. fol. 30.

6. Whereof it taketh the name of Agiſtment.

Agiſtator ſo called, becauſe he taketh beaſts to agiſtment, that is, to paſture within the foreſt, or to feed upon the pawnage, and cometh of the French word Gyſer to lie, becauſe the beaſts that feed there levant and without lying and riſing:

THis word Agiſtare, to Agiſt, or to feed, and alſo Agiſtamentum, agiſtment or feeding of beaſts, is derived of the Latin verbe, Agito, to drive, ſometimes to feed: for of this verb, Agito, to drive or to feed, the Lawyers have framed this verb, Agiſto, to feed or to agiſt, (by adding thereunto this letter S.) and then of Agiſto, Agiſtamentum, the feeding or agiſtment of beaſts or cattel, with herbage or maſt. For, it is to be noted, that agiſtment is in two ſorts, that is to ſay, the agiſtment of the herbage of woods, lands, and paſtures; and alſo the agiſtment of the woods, which is the maſt of the woods, which by a more proper word, for difference, is called **Pawnage**.

and his Office conſiſts in Agiſtando, recipiendo, imbreviando & certificando: and this Officer is conſtituted by the Kings Letters Patents; and of theſe, in ſuch foreſts where there is any pawnage, there be four in number, Co. 4. Inſt. 293.

CHAP.

CHAP. XII.

1. *Of Pawnage, and what Pawnage is.*
2. *Of the time of taking of Pawnage in the Kings Woods.*
3. *Who ſhall receive the Pawnage of the Kings Woods within the Foreſt.*
4. *Of the time of taking of Pawnage in the woods of other men.*
5. *Who ſhall receive the Pawnage of the Woods of other men within the Foreſt.*
6. *Whereof the ſame taketh the name of Pawnage.*
7. *Of the difference between Pawnage and Agiſtment.*

1. Of Pawnage, and what Pawnage is.

AS the Agiſtors of the Foreſt do attend upon the demeſne woods and lands of the King, to agiſt them for the Herbage thereof, for the benefit of the King: ſo likewiſe, in the time of pawnage, they do alſo attend to agiſt the demeſne woods and hedgrows of the King for the profit of the Maſt, which is called Pawnage: for, the feeding of Hogs or Swine with the Maſt of the woods is called the agiſting of the woods, but the profit of the Maſt is called the Pawnage: for this word Pawnage, although that in ſome ſence the ſame is oftentimes taken, as well for the Agiſtment of Swine or Hogs with the Maſt of the woods, as alſo the money that is received for the agiſtment; yet indeed Pawnage is rather the money that is received for the Agiſtment of the Maſt, then the Maſt, or the Agiſtment it ſelf: for, whereas the words in Charta de Foreſta are, Quando Agiſtatores noſtri debent recipere pannagium noſtrum, when our Foreſters ſhall receive our Charta de Foreſt, artic. 8.

pawnage, there by that word Pawnage is understood the money for the Agisting of the woods: and so likewise, whereas the words of Charta de Foresta are, Et habeat pannagium suum, and he shall have the pawnage of his own woods, there, by that word Pawnage, is understood the profit of the Mast, or the money that is received for the same; and likewise, where the words of Assisa Forestæ are, Quod deinceps capiatur pro quolibet porco quantum potest, ad opus domini Regis pro pannagio: that hereafter there shall be taken for every hog, as much as may be, to the use of the King, for pawnage, that is to say, a peny, or two pence for every hog, there, that word Pawnage is understood for the money that is due for the Mast, M. Hesket in his Reading of the Charter of the Forest saith, that Pawnage is not properly the Agistment, or mast of the woods for hogs, but the money or profit that is due to be paid to the King, or to the owner of the woods, for the same: and he saith, that it hath been adjudged, in the time of Ed. 1. where one brought an action of trespasse against John at Stile, for entring into his Park, and with his cattel there eating up of his pawnage; and there, saith he, the writ was abated by the award of the Court; for the writ ought to have been, Que il ove ses avers pessonem suam la depast, and not que il ove ses avers pannagium suum la depast, which is, that he with his cattel did eat up his mast there, and not, that he with his cattel did eat up his pawnage there: for, the pawnage is only the money that is paid for the mast, and not the Mast, as he saith: Quære of this case, for I can finde no such case reported.

Charta de foreſta, artic. 8.

Assisa & consuetudines Forestæ, artic. 14.

M. Hesket, f. 48

Vide librum intrationis, fol. 595. Trespas in pawnag. 1.

It doth appear in the Book of Entries, in an action of Trespasse brought against the Bishop of Coventry and Lichfield, for the taking and driving away of certain hogs, where the Bishop doth justifie the trespasse, by reason that he was seised of a great chase, as in right of

of his Bishoprick, in his demesne as of fee, within the limits and bounds of which chase there was a great wood, within which wood the said hogs were found agisting of the mast there, and the Bishop pleadeth a prescription, that he and all his ancestors have used to have the pawnage of the said wood, viz. unum denarium de pannagio cujuslibet porci, tempore fugationis in eadem Chasea proinde, that is to say, a peny for the pawnage of every hog, at the time of the drift of the said Chase, and he alledgeth also a prescription, that, for the levying of the same pawnage, he, and all his ancestors have used, yearly between Michaelmas and Christmas, to drive all the hogs then being within the same chase, unto some convenient place to pound, and there to impound and detain them, until that the same Bishop were satisfied and paid of the pawnage thereof; And so justifieth the taking and driving of the hogs, for the levying of the pawnage: by this case, it seemeth that this word Pannagium is rather taken for the money, or profit, that is made of the mast or agistment of the woods, then the mast or agistment it self; and yet, it seemeth that it may be taken for either of them, and that indifferently. Even by this case also, in the Book of Entries in the title of Toll it doth appear, that a certain Prior and Covent pleaded a grant from the King, to be quit De Pannag'o & Boscagio, of pawnage and of boscage; and there to be quit of pawnage, is understood to be discharged of paying any money for the pawnage of their Swine going in the Kings woods; and to be quit of Boscage, and is be discharged of paying any duety for windfal-woods: by this it appeareth, that this word Pawnage is most properly understood the money that is paid for the mast of the woods: and yet, here it may be also taken for the feeding of the Swine with the mast, or the profit of the mast. Also in the book of Entries

Vide librum intrationis, fol. 605. in titulo Tolle.

Vide librum intration's, in titulo alli x, fo. 75. in offices.

in the title of Assise, the tenant there pleaded a grant from the King, for the keping of a certain Park, with the profits and commodities of the woods of the same Park, and also the pawnage: and the words of the grant are, Nec non pro quolibet porco, in eodem parco ad pannagium posito, pro eodem pannagio unum quadrantem: And also for every hog in the same Park put to pawnage, for the same Pawnage one farthing: here in this place, this word Pawnage is rather understood for the feeding of hogs with mast, then the money for the feeding of them; and yet here it may be taken for either of them very well. Master Lynwood in his provincial Constitutions of England, amongst the tythes of woods and wild fruits that are payable, he speaketh De Pannagiis Sylvarum, of the mast of Beech, or Oke, or such like, where he saith, Si vendantur, &c. if the mast be sold, then the owner of the woods shall pay the tenth peny, De Pannagiis Sylvarum, of the mast of the woods, or the tenth peny of the money that is received for the mast of the woods: here, this word Pawnage is most properly understood for the money that is paid for the mast, and may also be understood the mast it self.

Vid. M. Lynwood, fol. Pannagiis.

2. Of the time of taking of Pawnage in the Kings woods.

The time of pawnage in the Kings demesne woods doth begin upon Holy-Rood day, being fifteen days before the feast of Saint Michael, Quando Agistatores nostri conveniunt ad agistandum dominicos Boscos nostros. When the Kings Agistors do meet together to Agist the Kings demesne woods; and doth end forty days after the feast of Saint Michael, that is about the feast of Saint Martin the Bishop, in Winter, quando Agista-

Charta de foresta, artic. 8.

Agiſtatores noſtri debent recipere pannagium noſtrum, when the Kings Agiſtors ſhall meet together to receive his pawnage.

3. Who ſhall receive the pawnage of the Kings woods within the Foreſt.

AND although that the Kings demeſne woods and lands are to be Agiſted with the aſſent, priority and conſent of his Foreſters, Verderers, and Agiſtors, as it doth appear in the Aſſiſes of the Foreſt; yet the Kings Agiſtors of the Foreſt only are to receive the Pawnage money for the ſame, as it doth appear by the words of the Charter of the Foreſt, videlicet, When our Agiſtors ſhall receive our Pawnage; and the Agiſtors of the Kings Foreſt only are chargeable to the King, to anſwer the pawnage, as it doth appear by the Entries in the Records of the Aſſiſes, and Iters of Pickring and Lancaſter, in ſundry places, as already hath been ſhewed before in the laſt Chapter of Agiſtment; ſee this matter more at large in the ſame Chapter, in the third Section.

4. Of the time of taking of Pawnage in the woods of other men.

FReeholders, and all others that have woods and lands within the regard of the Foreſt, may Agiſt them, for the maſt thereof, at ſuch time as is moſt convenient, when the maſt is ripe and ready to be Agiſted; for, although it was once appointed for a law by the Aſſiſes of Woodſtock, Quòd nullus agiſtet Boſcos ſuos infra metas Foreſtæ, antequam Boſci ſui agiſtentur, that no man ſhould Agiſt his own woods within the regard of the Foreſt, until that the Kings demeſne woods were

Aſſiſa foreſtæ de Woodſtock, anno. 4.

Agisted; yet the Law is now altered by the 9. Article in Charta de Foresta, videlicet, Unusquisque liber homo agistet Boscum suum in Foresta, pro voluntate, & habeat pannagium suum. Every Freeman may Agist his own woods within the Forest at his own will and pleasure (that is, when he will:) and he shall have also the pawnage of his own woods; so that by this article of the Charter of the Forest, being granted long after the Assises of Woodstock, Scilicet, in the 9. year of King Henry the third, that bondage is now freed: whereby, men may Agist their own woods for the pawnage, at any time when they will, so that the same be done Tempore pannagii, in the time when there is mast; for, all other times when there is no mast in the woods, then hogs nor swine are not tollerable there. But yet, it is to be understood, that by the Assises and Customs of the Forest, made in anno 6. E. 1. It is appointed for a Law, Quod si quis, &c. That if any man have woods lying within the Forest, nèr unto the Kings demesne woods, the owners of such woods may not Agist them, until that the Kings demesne woods be Agisted; and that is, because that the owners of such woods shall not hinder the Kings Agistment, by the Agisting of their woods: so that now the Law seemeth to be thus, That every freeman that hath any woods or hedg-rows within the Regard of the Forest, he may Agist them and take the pawnage thereof at any time when he will, in the time of pawnage: such woods and hedg-rows, as are lying nèr unto the Kings demesne woods and hedg-rows; only excepted which may not be Agisted, until that the Kings demesne woods and hedg-rows be Agisted, which is about the feast of Saint Martin the Bishop, in Winter.

Charta de foresta, artic. 9.

Assisa forestæ, anno 6. Ed. 1. Rastal forest. 21

5. Who

5. Who ſhall receive the pawnage of the woods of other men within the Foreſt.

It ſeemeth alſo by theſe words of Charta de foreſta, unuſquiſque liber homo agiſtet Boſcum ſuum, & habeat pannagium ſuum: Every freeman may Agiſt his own woods himſelf, that is, he may feed them, or take the maſt of them with his own ſwine or hogs. And then it doth follow with a copulative, Et habeat, &c. and he ſhall habe the pawnage thereof, that is, he may Agiſt them with the ſwine or hogs of other men; and that he may take or receive the pawnage, that is, the money for the pawnage. And ſo it is alſo proved by the Aſſiſes and Cuſtoms of the Foreſt, in theſe words, Et hoc fiat de exitu porcorum: viz. and this may be done of the profit of the Swine. So that a man may Agiſt his woods himſelf that are within the Foreſt, he may likewiſe receive and take the pawnage of them, by the Agiſting of the Swine of other men; and ſo the owners of the woods themſelves may receive their own pawnage; which liberty is given by the Charter of the Foreſt; for, the Laws of the Foreſt were otherwiſe before.

Charta de foreſta, artic. 9.

Aſſiſa de Foreſta, an. 6. E. 1. artic. 15.

6. Whereof it taketh the name of Pawnage.

This word Pannagium, for pawnage, is derived of Panegyris, which is a collection or gathering together of the money or the profits that is made of the fruits of trees, as of maſt, and ſuch like: ſo that, as the Latiniſts do uſe Fruges, for all kind of fruits, ſo the Common Lawyers and the Civilians do uſe this word Pannagium, for the maſt of ſuch trees only, as do bear fruit to feed Swine withall, or elſe, for the money that is made of ſuch fruits: ſo that as by this word Agiſtment,

ment, is understood the herbage of any kind of ground, or the money that is paid for the same: or likewise, this word Pawnage is taken for the Agistment of any kind of mast of trees to feed swine or hogs withall, or, the money that is paid for it.

7. Of the Difference between Pawnage and Agistment.

And therefore this is the difference between Pawnage, and Agistment, that Pawnage is the Agistment of the mast of the trees, or the profit that is made of it: And Agistment is the herbage of the ground, or the profit that is made of the same.

8. Claim to be quit of Pawnage, &c.

Before Scrope and another Justice in Eyre, a man claimed to be quit of Pawnage in the Kings Forest; and also he claimed in the same Forest pawnage for the hogs of his tenants for agistment; and because it belonged to the Justices of the Forest, they would not meddle with it.

CHAP.

CHAP. XIII.

1. *Of the fence moneth, or defence moneth.*
2. *How long the fence moneth doth laſt, and when the ſame doth begin and end.*
3. *At what time the fence moneth had his firſt beginning.*
4. *To what end, and for what cauſe, the ſame was firſt ordained and appointed.*
5. *How every Officer of the Foreſt ought to demean himſelf in the time of the fence moneth for the perſervation of the wild beaſts.*
6. *That no man ought to wander up and down in the foreſt in the time of the fence moneth without ſome eſpecial buſineſs there.*
7. *Whereof the ſame taketh the name of the fence moneth.*

1. Of the fence moneth, or, defence moneth.

ALmighty God of his prohident wiſdom hath appointed times and ſeaſons for every thing; and having made man the chiefeſt, and moſt excellent creature upon the face of the earth, he hath endued him with knowledge and foreſight to foreſee and prohide for times and ſeaſons ſuch things as are neceſſary, as it appeareth more in the 39. Chapter of Job, where God ſpeaking unto Job, ſaid, Knoweſt thou the time when the wild Goats bring forth their young among the ſtony Rocks? or layeſt thou wait when the Hindes uſe to fawn? Reckoneſt thou the moneths after they ingender, that thou knoweſt the time of their bearing, or when they lie down? When they caſt their young ones, and when they are delivered of their travail and pain, how Job. chap. 39. 2.

how their young grow up and wax great through good feeding, unto whom I have given the wilderness to be their house, and the untilled land to be their dwelling place. Whereby it appeareth, that even as God hath appointed the wild beasts of the Forest a place to dwell in, so hath he also appointed them a time to fawn in, and to bring forth their young ones, for the increase of their kinde: and as God did make these wild beasts of the forest for the use of man, and gabe him the rule and charge over them: so the King, being the chief head and Ruler of man, hath made and appointed certain Laws and Ordinances for the preservation of those wild beasts, for the necessary service and use of man: and for that cause the Kings and Princes of this Realm habe made and established certain prohident Laws for the preservation of Forests, and for the replenishing of them with wild beasts: among which Laws there is a special Regard bed for the time of fawning, being the time, when that the feminine kinde of those wild beasts do bring forth their young ones. And among all the Laws and Ordinances that ever were made for the preservation and continuance of a forest, there is none that should be more carefully looked unto, and regarded, then this, for the time of their increasing, to preserbe the young fawns: so that as those wild beasts, that are already come to their season and perfection, for the service & use of man, shall be taken away, there may again be others to grow up in their places, to replenish the forest with new supply: for, if the Deer that are already, be daily killed and destroyed, and no care had for their increase again, then the forest will very soon come to be no forest, but only a territory of bacant ground: and therefore the Laws habe appointed certain Officers, only to attend upon the wild beasts, and the Wert of the forest, at all times of the year, to preserbe them from hurt, and to see them

them in safety; and therefore chiefly in this time of fawning, when the greatest danger of hurt is, when the young ones cannot run nor shift for themselves. Canutus in his fourth Canon did appoint certain mean Officers, to watch the Deer in the night time all the whole year: whereforo it is to be supposed, that they must be principally watched and regarded in this time of danger, if they shall be watched every night at all other times, when there is less danger. Canutus, can. 4

King Henry the Second, in his Assise of Woodstock did appoint, That twelve Knights should be appointed in every Forest, to look unto the safety of the wild beasts of the Forest; which Knights also are appointed to see that other Officers of the Forests, that have the charge of those wild beasts, shall give their attendance for their better safety and peace. Assisa foresti. de Woodstock, artic. 4.

King Henry the Third, by the Charter of the Forest, did appoint, that the third Court of Swanimote should be holden and kept fifteen days before Midsummer, and that at that time all the Foresters, Verderers, and Agisters should meet together, for to make provision for the quiet and safety of the wild beasts, during the time of their Fawning, which is called the Fence moneth, or Tempus vetitum. Charta de foresta, artic. 8.

2 How long the Fence moneth doth last, and when the same doth begin and end.

The Fence moneth doth always begin fifteen days before Midsummer, according to the Charter of the Forest, viz. In initio quindecim dierum ante festum Sancti Johannis Baptistæ, quando Agistatores nostri conveniunt pro feonatione bestiarum nostrarum; that is to say, In the beginning of fifteen days before Midsomer, when the Agistors of the Kings forest shall meet together for the fawning

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fawning of the wild beasts of the forest; and it doth end fifteen days after Midsummer, which is upon Saint Cyrils day.

Assisa forestæ de Pickring, f. 20. It doth appear by the Assises and Iters of Pickring, and Lancaster both, that the Fence moneth is always fifteen days before Midsummer, and fifteen days after, quod nota: Every common moneth is but xxviij. days, but the Fence moneth is xxxj. days.

Assisa forestæ de Lancast. fo. 7. And it doth also appear by the Assises of the forest of Lancaster, that if any Swine be found in the Forest, Tempore vetito, they shall be forfeited to the King. And therefore they shall be delivered to the Kings Verderers, that they may answer the value thereof. And the same Law is of Sheep and Goats that are found in the forest in mense vetito, & ideo warda facta. And therefore during this Fence moneth there must be diligent watch and ward kept in every Bailywick throughout all the forest, that no man be suffered to go wandring up and down in the forest out of the Kings common high way, lest that he should steal or bear away the young Fawns: nor that no Swine be suffered in the forest, lest that they do destroy or devour the young Fawns; nor no man be suffered to pass to and fro, nor to fetch or drive any cattle or beasts through the waste soil of the Kings forest, out of the high way, for fear of troubling or disquieting of the wild beasts in the time of their fawning.

Assisa forestæ de Lancast. fo. 7.

3 At what time the Fence moneth had its first beginning.

The observing and keeping of the Fence moneth in forests seemeth to have been in use so long, that there is no certain beginning to be shewed of it: And therefore the antiquity of the same must needs be the greater;

greater: for that thing is always very ancient, whose beginning cannot be shewed. And sith that there are now no Laws for forests to be shewed that were before the time of Canutus, and there can be no beginning of the Fence moneth shewed since the making of Canutus laws, therefore it is to be thought, that the same was in use when that Canutus made the Canons of the forest laws. Master Sergeant Fleetwood saith, that the Fence moneth hath always been kept with watch and ward in every Baili wick throughout the whole forest, since the time of Canutus; for, saith he, although that the forest be a Sanctuary of peace for the wild beasts, yet in the time of their fawning there must be diligent watch kept for the preservation of their quiet peace. It doth appear by the Assises of the Forest of Lancaster in sundry places that the Fence moneth was kept in the time of Edward the third with diligent watch and ward. It doth appear by the Charter of the Forest, that the observing of the Fence moneth was before the time of Henry the third: for in the same Charter, the third Swanimote was appointed to be kept when that the Agisters, &c. do use to meet together for the fawning of the wild beasts: so then the same was in use before the Charter of the forest was made, which was in the time of Henry the third. And therefore very likely, as Master Fleetwood saith, to have been from the time of Canutus his first constitutions of forest laws; so that when he made laws for the preservation of forests, and all the wild beasts therein, by all means that might be, then the Fence moneth was therein concluded.

M. Sergeant Fleetwood in his collection of the Forest laws, fo. 5.

Anno 8 E. 3. Assisa forestæ de Lancast. fol. 7.

Charta de foresta, artic. 8.

4 To what end, and for what causes the same was first ordained and appointed.

THe end and purpose of the first appointing of the Fence moneth was only for the preservation of the increase of the wild beasts, to the end that the forest might still be replenished with new supply, which otherwise could not continue, but only by the careful preservation of the young ones, to grow up in the places of those that are slain, or otherwise decayed.

5 How every Officer of the Forest ought to demean himself in the time of the Fence moneth, for the preservation of the wild beasts.

AND because this may the better be accomplished and put in execution, there are divers meet Officers appointed for the forests, viz. Foresters, Verderers, Regarders, Agisters, and Woodwards, and all these are to joyn together in this service for the Fence moneth; for at the Court of Swanimote, holden fifteen days before Midsummer upon St Edmonds day, when the Fence moneth doth begin, the Verderers, being the Judges of that court, and the chiefest Officers, they are to direct all the other Officers of the forest in their course. It doth appear by the Iters of Lancaster, that the forest of Lancaster is divided into sundry wards, and that the Verderers of the same forest, at the Swanimote Court holden for the Fence moneth, do divide themselves, every Verderer to his ward, or to divers wards; and then every Verderer within his division doth call all the other Officers of the forest within the same division, as the Foresters, Regarders, Agisters, and Woodwards, and give unto them directions how, and in what manner

Itin. Lanc. f. 59.

manner the Foresters shall cause their watch to be kept within every of their several divisions, and in what places of those divisions, and with what company of men: and this being done with the privity and consent of the Regarders, Agisters, and Woodwards, the Regarders and Agisters they do joyn with the Foresters to be ready in aiding and assisting of them, in any thing requisite and necessary; and the Woodwards likewise do give their attendance every one within his own charge, to watch with the Foresters. And at this time also the Foresters do give open warning to every house within every bailiwick in the forest, that they shall keep in all their dogs, and not suffer them to go abroad: and during this time Mastives, that are expeditated according to the assises of the forest, may not be suffered to go from the houses of their Masters, nor any kind of dogs whatsoever. And in this time of warding, those that do watch and ward, they have this given them in charge by the Verderers, viz.

1. First, That if they shall find any man suspiciously wandring up and down in the forest out of the highway, without some special business, in this time, they shall attach him, and bring him to the Verderers.

2. Secondly, if they shall find any dogs running up and down like to do hurt, or to fear any Deer, they shall inquire whose dog the same is, and they shall also take him up, and bring him to the Verderers.

3. Also, if they shall see any man hunting or coursing any wild beast within the forest, they shall attach him, and bring him before the Verderers.

4. Also, if they shall see any body carrying away of any young fawn or fawns, they shall apprehend him, and carry him to the Verderers.

5. Also, if they shall find any man out of the Kings highway, carrying of either cross-bow, long-bow, or gun

or any other engine, to hurt or destroy any wild beast of the Forest, they shall take them with the same, and bring them to the Verderers of the Forest.

6. Also, if they shall find any person or persons gathering of Rushes or Vents or such like within the waste soil of the Forest, or within the Kings demesne woods or lands, or elsewhere, to the hurt of the wild beasts in this time, they shall attach him and cause him to be brought to the Verderers, there to find pledges.

7. Also, if they shall see any person or persons driving of any swine into the forest to feed, they shall forthwith attach him and the Swine also, and carry him and the Swine to the Verderers.

8. Also, if they shall find any forreiner driving his cattel into the waste soil of the Kings Forest, to Agist them there, they shall apprehend him and carry him to the next Verderers.

9. Also, if they shall find any Deer hurt or dead, they shall inquire how he came by the same, and give notice thereof to the Verderers.

10. Also, if they shall see any offenders or trespassers in the forest, they shall apprehend them, and carry them before the next Verderer, if they can: and if they cannot take them themselves, then they shall make hue and cry after them until they be taken.

11. Also, if any man shall fetch or drive any kind of cattel or beasts through the waste soil of the Kings forest, to the hurt of the wild beasts, they shall attach him and carry him before the Verderers: And this being done in every point accordingly, and these Articles truely performed, the wild beasts shall have a quiet peace for their time of Fawning. And it doth appear by the Assises of the Forest of Lancaster and Pickring, that this very course was observed and kept in every point in the time of Ed. 3. And also that by the Laws of the forest,

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this courſe is to be obſerved and kept in every Foreſt, in the time of the Fence moneth: for otherwiſe, Foreſts will ſoon decay.

6. That no man ought to wander up and down in the Foreſt in the time of the Fence moneth, without ſome ſpecial buſineſs there.

And note, that the execution of the Laws of the foreſt (as it doth appear by the antient Aſſiſes and Iters) habe been ſeberely looked unto, for the preſervation and quiet of the wild beaſts, with their fawns, in this time, that no man might be ſuffered to habe any acceſſe or paſſage neer unto any place where they do then frequent or reſort. Aſſi. Lanc. f. 19.

7. Whereof it taketh the name of the Fence moneth.

And therefore this Moneth is called Menſis veticus, that is to ſay, the forbidden Moneth, or the moneth in the which every man is forbidden to hunt, or to go into the foreſt, to diſquiet the wild beaſts. Some antient Foreſters habe uſed to call this Tempus veticum, that is, the forbidden time, or, the time wherein every man is forbidden to wander up and down in the foreſt, or otherwiſe to diſquiet the Deer there. And ſome antient Foreſters do call this Moneth, the defence moneth, which we now call the Fence moneth: Becauſe that in this moneth there muſt be watch and ward kept with men and weapons, for the fence or defence of the wild beaſts; and for that cauſe the ſame is called the fence moneth, or, defence moneth. Vid. Co. 4. Inſt. 313.

The Officers their ſpecies and number: They appear by the return of the Writ of Summons, in Coke, 4. Inſt. 310.

Vic. Eborac. The perſons that ought to appear before the Juſtices in Eire of the Foreſt, &c.

Foreſta Hen. Com. Lanc. Unde theſe words are included the Conſtable of the caſtle, the Warden, the Ranger, the Regiſters, the Steward, and Bowbearer.

Four great learned men Juſtices in Eire of the Foreſt: See Charta de Foreſta, cap. 2.

Foreſtar' Viridar'

EDwardus Dei Gratiâ Rex Angliæ, Dominus Hiberniæ, & Dux Aquitaniæ, Vic. Eborac. ſalutem. Summon' per bonos ſummonitores Archiepiſcopos, Epiſcopos, Abbates, Priores, Comites, Barones, Milites, & omnes liberè tenentes qui terras ſeu tenementa habent infra metas Foreſtæ dilecti conſanguinei & fidelis noſtri Henrici Com. Lanc. de Pick. in Com. Præd. & de qualibet villa ejuſdem Com. infra metas ejuſdem Foreſtæ exiſten' quatuor homines & præpoſitum & Foreſtar' villarum, & omnes alios, qui coram Juſticiar' ad placita Foreſtæ venire ſolent & debent, quod ſint apud Pickering die Lunæ prox' poſt Feſtum Sancti Michaëlis prox' futur' coram dilectis & fidelibus noſtris Richardo de Willoughby, Jo. de Shardelowe, Roberto de Hungerford, & Johanne de Hambury, tribus vel duobus eorum quos ad requiſitionem dicti conſanguinei noſtri conſtituimus Juſtic' ad itinerandum hac vice ad placita Foreſtæ ipſius Comitis in Com' Præd' a tempore quo Edmundus nuper Com' Lanc', pater præd' Henrici, cujus heres ipſe eſt, placita Foreſtæ in eadem Foreſta virtute conceſſionis ſibi per Dominum E. nuper Regem Angliæ, Avum noſtrum, inde fact' ultimum tenuit auditur' & factur' præceptum noſtrum, iis quæ ad placita præd' pertin', fac' etiam venire coram Juſtic' præd' omnes Foreſtar', Viridar', & omnes illos qui tuer' Foreſtar' & Viridar' Foreſt' predict', in Com' præd' poſt ultima placita prædict' cum omnibus attachiament' ſuis tam de viridi quam venatione quæ poſt ult' placita Foreſtæ ſunt emerſa & nondum terminat', (viz.) tam de illis attachiamentis quæ manent infra metas Foreſtæ quam de illis quæ manent extra Foreſt' fac' etiam venire coram eiſdem Juſticiariis tribus vel duobus eorum Regardatores ipſius.

To what end Officers are ſummoned.

Regardatores.

ipſius Comitis in balliva tua. Ita quod habeant ibi omnia Regarda ſua ſigillis ſuis ſignat', & omnes Agiſtatores præfat' Com' in eadem balliva ſua cum omnibus Attachiament'. Et habeas ibi ſummon' & hoc Breve. T. meipſo, apud Weſtm', 17 die Auguſti, Anno Regni noſtri octavo.

Ad quod Breve Petrus de Saltmarſh, Vic. Eborac. retornavit quòd fecit plenum retornum iſtius brevis Hugoni de Nevill ballivo libertatis H. Comit' Lanc' Honor de Pickring, cui executio iſtius Brevis reſtat' faciend' qui ſibi reſpond' quod ſum' fecit Archiepiſcopos, Epiſcopos, Abbates, Priores, Comites, Barones, Milites, & omnes libere tenen' qui terras & tenementa habent infra metas Foreſt' & qualibet vill' ejuſdem Com' infra metas ejuſdem Foreſtæ exiſten' quatuor homines & prepoſit' & Foreſtar', & Villar', & omnes alios, qui coram Juſticiar' ad placita venire ſolent & debent, quod ſint apud Pickring ad diem in Brevi prædict' content' coram præfat' Juſticiar' tribus vel duobus eorum audituꝝ & factur' preceptꝝ Domini Regis de iis que ad prædict' placita pertinent. Et quod venire fecit Foreſtar', Viridar', & omnes illos qui fuer' Foreſtar', & Viridar', Foreſt' præd' in balliva ſua poſt ult' placita præd', cum omnibus attachiamentis præd' tam de viridi, quam de venatione, que poſt ult' placita Foreſtæ ſunt emerſa & nondum terminat'. Et etiam quod venire fac' coram ejuſdem Juſtic' tribus vel duobus eorum Regardatores ipſius Comitis in baliva ſua ita quod haberent ibi omnia Regarda ſua ſigillis ſuis ſignat', & omnes Agiſtatores præfat' Comitis in eadem balliva ſua cum omnibus Agiſtamentis, prout patet in retorn' Schedula ſuo prædicto attachiata.

Foreſtar de feodo in le Weſtward iſtius Foreſtæ de Pickring, *viz.*

Willielmus de Percehay Miles.
Petronilla de Kynthorpe, & poſuit loco ſuo Edmundum de Haſtings ad omnia faciend' quæ Foreſtar' incumbunt durante itinere & fecit Sacramentum.

Forestar' Custod' Forestæ in le Eastward, viz. { Rogerus de Leicester. Hugo de Yeland. Willielmus de Parker.

Nota, *A woman that is a Forester in fee cannot execute the Office her self; but she may make a Deputy during the Eire, and her Deputy shall be sworn*, &c. *by* Charta de Foresta, *cap.*7 Tot Forestarii ponantur ad Forestar' custodiend' quot ad illas custodiend' rationabiliter viderint sufficere Viridarii 4.

Viridar' Forestæ de Pickring, *viz.* { Robertus Thurnese. Rogerus Brown. Robert Playce. Jo. de Kilwardbye.

Regardators 13. *by the Stat.* de Charta Foresta, cap: 7. *There are to be* 12. *at the least; and as here it appears, there may be more.*

Regardatores Forestæ de Pickring, { Willielmus de Everley. Rogerus de Longe. Johannes Boye. Jo. Filius Alani. Galfridus de Knithorpe. Thomas Thurese. Hugo de Nevil. Rogerus de Alveston. Johannes Filius Glalford. Rogerus de Stapleton. Rogerus Strutcock. Radulphus de Colloughton. Johannes de la Chemne.

Agi-

Agiſtatores 4. { Agiſtatores in le Weſtward Foreſtæ. { Johannes Dring. Richardus Ruſſell. / Agiſtatores in le Eaſtward iſtius Foreſtæ. { Williel. de Roſton. Wllielmus Ruſſel.

Nomina Foreſtar' nunc' iſtius Foreſtæ & eorum qui fuerunt Foreſtar' iſtius Foreſtæ, & eorum qui fuerunt Viridar' iſtius Foreſtæ. Nomina Foreſtar' & Viridar' qui fuerint.

Alanus de Newton. / Johannes de Wardeſden. { Capital Foreſtar' Williemi de Percehay, unius Foreſtar' de feodo Foreſtæ de Pick' in le Weſtward, ibidem.

Henry de Ripley. / Thomas de Dalby. { Capital Foreſtar' Petronillæ de Kynthorpe alterius Foreſtar' de feodo Foreſtæ de Pickring.

David de Newton. / Thomas de Ripley. { Capit' Foreſtar' Hugon' de Yealand Foreſt' Cuſtodis Foreſtæ in le Eaſtward.

Nomina Sub-foreſtariorum Foreſtæ prædict.

Sub foreſtarii 8. { Johannes de Hatley. / Richardus de Aleintofetes. / Willielmus Gower. / Richardus de Helmeſley. / Johannes Munmewe. / Johannes Scot. / Willielmus Courtnan. / Foreſtar' Radulphi de Haſtings, Cuſtod' Foreſtæ predict' nunc'.

Nomina Subforeſtar' qui fuer' in Foreſta iſta poſt ultimum iter, &c.

Galfridus de Hawley.	Alanus fil. Radi.
Robertus de Wigan.	Adamus fil. Willielmi.
Petrus Lilly.	Johannes de Nevill.
Johannes Rouceby.	Thomas de Newton.
Rogerus fil. Nich.	

Barnardus de Bergh, qui obiit, fuit Viridar' in Foresta istâ, & Alexander de Bergh, filius ejus & heres, venit & reddidit Rotulos suos tam de Viridi, quam de venatione tangen' Foresta istam de tempore predicto.

The Law of the Forest is, That if a Verderor dye, his Heir is to bring in the Rolls of his Ancestors time; which if he do, the *entry* is *ut supra*, Co. 4 Inst. 310.

CHAP. XIIII.

1. *Of Common and Commoners within the Forest.*
2. *What Common is, and whereof the same taketh the name of Common.*
3. *How many sorts of Common there are, and in what manner they be used.*
4. *Who ought to have Common within the forest.*
5. *Who ought not to have Common within the Forest.*
6. *What beasts are Commonable within the Forest, and what beasts are not.*
7. *Of Surchargers of the forest, and who is a surcharger by the Law.*
8. *How and in what manner a surcharger of the forest is to be punished by the Laws of the forest.*

1. Of Common and Commoners within the Forest.

ALthough that the King, by his Prerogative Royal, may afforest the demesne woods and lands, pastures and waste soil of every man within

within this Realm, whereſoever he will, (as already before hath been declared,) yet by ſuch afforeſtation of ſuch woods, lands, paſtures, and waſte ſoils, the King doth not at any time thereby reſtrein, abridge, or prejudice any man of his right or intereſt of Common for ſuch beaſts as are commonable within a Foreſt: As it doth appear by Charta de Foreſta, where the King doth grant, that all ſuch Foreſts as were afforeſted by King Henry the Second, ſhould be viewed by good and lawful men: and if he have afforeſted the woods or lands of any other man more then the Kings own demeſne woods or lands, to the hurt or prejudice of him whoſe woods the ſame is, that then forthwith the ſame ſhall be diſafforeſted again: and if he have afforeſted the Kings own proper woods or lands, that they the ſame ſhall remain a Foreſt ſtill: Salvâ communiâ de herbagio & aliis in eadem Foreſta, illis, q i prius eam habere conſueverunt, ſaving the common of herbage, and of other things in the ſame Foreſt, to them which before were accuſtomed to have the ſame: whereby it doth appear, that whereſoever the King doth afforeſt his own woods or lands, he doth not by ſuch afforeſtation, abridge or prejudice any man to have common in the ſame that have uſed, or of right ought to have Common therein, but doth ſtill reſerve the common of herbage, as it was at the Common Law: therefore if the King, by the afforeſtation of his own proper woods and lands, doth not reſtrain the right of any mans Common therein, à multo fortiori, when the King doth afforeſt the woods or lands of other men, he doth not thereby prejudice or abridge the right of any man, to have Common in any waſte ſoil or other place within the Foreſt, where they have uſed to have Common, ſo that they do Common there with beaſts that are commonable within a Foreſt, but doth ſtill reſerve every mans right of Common with beaſts

Charta de Foreſta, artic. 1.

com-

commonable (notwithstanding the afforestation of the place) as it was in the Common Law before, in the Statute called Ordinatio Forestæ, made and established in the three and thirtieth year of King Edward the First, being long after he had confirmed Charta de Foresta: which Statute of some is called the Statute of the Purales, for that indeed the same was made in confirmation of the Purales: for, whereas before by the first and third Articles of the Charter of the Forest, a disafforestation of all such lands as were afforested by King Henry the Second, by King Richard the First, or by King John, was granted now by the said Statute of three and thirtieth of Edward the First, the said disafforestation was confirmed with a further explanation of the intent and meaning of the King, who shall have Common within the Forest, and for what cause: and who shall not have Common within the forest; in these words:

Ordinatio Forestæ, anno 33. E. 1. Stat. 5.

Charta de foresta, artic. 1. & 3.

The intent and will of our Lord the King is, that from henceforth where purliew is, that is to say, whereas woods and lands be disafforested, they may claim to be quit of the burthen and charge of the Forest. And whereas the Kings wild beasts of the Forest cannot have their haunt and repair upon those woods and lands so disafforested, as they might have had so long as the same was within the bounds of the Forest, that such folks (that is to say, such folk as are put out of the forest by the disafforestation) shall not have Common or other easement within the woods nor lands which remain within the bounds of the forest: but if any of them that be disafforested by the purliew, would rather be within the Forest as they were before, than be out of the forest as they be now, it pleaseth the King very well that they shall be received thereunto, so that they shall remain in their antient estate, and shall have Common and other easement, as well as they had before, &c. by this it appeareth

peareth alſo that by the Kings afforeſtation of any woods or lands of any mans, the King doth not thereby reſtrain any man of his right of Common with ſuch beaſts as are commonable within a foreſt but doth leave them ſtill to their Common, as they were at the Common Law before. And it ſeemeth alſo by the whole ſcope of this Statute, that the will and meaning of the King is, that every man that is a tenant of any land within the limits and bounds of the foreſt ſhall have and enjoy common in reſpect of the charge and burthen of the foreſt, becauſe that the Kings wild beaſts of the foreſt have their continual haunt and repair, to feed in quiet peace in every part of their woods and lands within the foreſt: therefore the afforeſtation of any place by the King doth not reſtrain any man of any right of common, either in waſte ſoil of the King, or in the waſte ſoil of any other man, or in any other place, but doth ſeem rather by this Statute to have inlarged their common in the waſte ſoil of the King only, or at the leaſt way doth leave every mans right of common in all Foreſts, in ſuch ſort, as they were at the Common Law before.

Now then, ſeing that every mans right of Common in Foreſts is reſerved, and left remaining in the ſame degree, that it was at the Common Law before that the ſame was afforeſted: Therefore it is neceſſary firſt of all to declare what Common is, and whereof the ſame taketh the name of Common; how many ſorts of Common there are; who is to have Common within a Foreſt; in what manner he is to have Common there: with what beaſts, and in what reſpect.

2. What Common is, and whereof named Common.

And therefore it is to be underſtood, that Common is properly the right or intereſt that a man hath to

to feed and pasture his beasts or cattel in the land or soil of another man. And it taketh the name of Common, a Communicate, of community, participation, or fellowship, because that most commonly where men habe common of pasture for the feeding of their beasts or cattel, many mens cattel do use to feed there together: and therefore Budæus doth call a Common of pasture, Compascuum, that is to say, a place wherein many mens cattel do feed together in community.

Budæus.

3. How many sorts of Common there are, and in what manner they be used.

Termino Hill'. an. 10. H. 7. fol. 12. pla. 1.

And at the Common Law there are four sorts of Common, that is to say, Common appurtenant, Common appendant, Common in grosse, and Common per visinage. Common appurtenant is where a man is seised of a messuage and certain land, unto the which messuage and land the Common is appurtenant. And it is to be noted, that at the Common Law, Common appurtenant is, to habe Common for all manner of beasts and cattel, as well for such as are commonable, as for such beasts that are not commonable, that is to say, for geese, goats, sheep, and swine; and therefore no man may habe such Common appurtenant for all manner of beasts within a Forest, without a special grant from the King, or owner of the Forest. A man may habe Common appurtenant unto a messuage and to certain land for such beasts as are commonable within a forest, which is for all manner of beasts, except geese, goats, sheep, and swine, for these beasts are not commonable within a Forest.

Termino Pas. an. 9. Ed. 4. fol. 3. pla. 13.

Dier, fol. 70. pla. 39. 25. Ass. pla. 8. 37. H. 6. fol. 34. pla 20.

Termino Trinitatis, 16. H. 8. fol 4. pla. 15.

Common appendant is, where a man is seised of certain land arable, unto the which he hath Common appendant; and this Common cannot be appendant unto

a house, or unto any other land, but only unto arable land: and he that hath Common appendant may not common with all manner of beasts, but only with such beasts as are commonable, which is with such beasts only as do compast the land, unto the which the same is appendant; in which sort of common, geese, goats, sheep, and swine, be excepted and always forbidden.

Common in grosse is, where a Lord of a Manor, or any other, doth by his deed under his hand and seal grant unto another to have Common within his Manor, or in any other place certain, with certain beasts only, or with all manner of beasts, this is Common in grosse; and such common a man may have within a Forest, by the grant of the King only, or by the grant of the owner of a Forest. Vid. 22 Ass. pla. 16. in casu del. Prior de Napleton, 36. Ass. pla. 3.

Common by villinage, or Common by neighbour-hood, (as some do call it,) is where the tenants of two Lords, which be seised of two Towns, where one lieth nigh unto another, and every of them have used from the time whereof the memory of man runneth not to the contrary, to have common in the other Town, with all manner of beasts commonable, this is Common by villinage: and such common may be within a forest very well by prescription. And these are the four sorts of common that are at the Common Law. Termino Hil. 13. H. 7. fol. 13. p. 3. Termino Hill. 13. H. 7. fol. 13. Vid. 32. H. 8. Dyer, fol. 47. p. 13.

4. Who ought to have Common within the Forest.

AND concerning this point, who shall have Common within a forest, both by the Common Law, and by the Forest Law, it seemeth to me, as I do understand it, that he that is an inhabitant within a forest, and can prescribe to have Common within the Kings waste soil, or within the waste soil of any other Lord within the forest, as appurtenant unto his dwelling house only, or Trinitatis 15. E. 4. fo. 32. p. 16. fo. 29. p. 7.

unto

unto a dwelling house and certain land, with beasts commonable within a forest, this is a good prescription at the common Law, and therefore good by the Forest Law; because there is no Law, nor Ordinance of the Forest against it: and therefore he that can so prescribe, shall have Common within a forest according to his prescription. And a man may prescribe to have Common, by reason that he is an inhabitant within such a Town which is an antient Town, and that within the same Town there is a custom that hath been used before the memory of man, that all the Inhabitants within the same Town have used to have Common within a certain place for all manner of beasts commonable, that are levant and couchant within the same Town; and this is a good prescription for Common, at the Common Law; and it seemeth that such a prescription made for common within a forest is a good prescription. But a man cannot prescribe to have Common by reason of his inhabitancy, that dwelleth in any new erection: for, all new erections, that are made within any forest, are Purprestures by the Laws of the forest: And therefore they that do dwell in new-erections may not prescribe to have Common by reason of their inhabitancy only.

Paschæ, anno 20. B. 4. fo. 3. p. 15.

Trin. anno 15. B. 4. fol. 32. p. 16. fo. 29. p. 7.

And it doth appear by the Assises of the Forest of Lancaster, in Anno 10. Ed. 1. That the Burgesses of Lancaster did make their claim to have Common of pasture within the Forest of Lancaster; and this claim being so made for Common of pasture for such beasts as are commonable within a Forest, was there holden for a good claim: But it was there holden for Law, that neither Sheep, Swine, nor Goats, are allowed to have common within the Forest, Quia bidentes & porci non sunt animalia ad communicandum in foresta, sed præbent exilium ferarum in eadem, because that sheep, goats, and hogs, are not beasts meet to common in a Forest,

Assisa forestæ de Lancast. fo. 13. fol. 30.

Ibid.

rest, for they do cause the exile of the wild beasts in the same.

And the very like claim was there made by the Burgesses of Preston, to have Common of pastures within the same Forest, by reason of their inhabitancy, and allowed for a good claim. And it was adjudged in the Assises of Pickring, that no man may common with Goats within a Forest, without special warrant, Quia Capriolus non est bestia venationis, neque forestæ. Ibid. Assisa forestæ de Pick ing, fol. 67.

It was admitted and adjudged, in the claim of one Lambeson, that to be quit of pawnage in tempore pannagii, might be appurtenant unto a mans freehold.

An Office of a Woodward, and the bark of timber trees felled, was claimed to be pertaining unto a Manor, and adjudged accordingly. Itin. Pickring, fol. 16.

To be quit and discharged of pawnage, and pawnage of Swine within the Forest, may be by prescription appurtenant unto lands; and likewise of Common of pasture, and to claim that he and his ancestors a tempore quo, &c. is a good title, without saying, that he and his ancestors, and all they whose estate he hath in certain lands, &c. a tempore, &c. Itin. Pickring, fol. 16.

In the Assises of Pickering, in the case of one Alice Gower, it was there adjudged that no man might common within the Forest, with the beasts of strangers, but with his own beasts that were commonable within the Forest: And also that if the Foresters or Officers of the forest, do disturb the cattel of any person or Township, to have Common within the forest, whereby they have wrong, or do take any money of them by extortion this is fineable at the Justice-seat. Pickring, f. 10. Assisa de Pickring, fol. 10.

And if a man do make his claim for Common of pasture within a forest, or for any other liberty, by good title of prescription, or otherwise, if the Justice of the forest do any thing stick at the allowing of any mans Itin. Pickring, fol. 182.

liberty

liberty claimed before them, then may the party grieved have a writ of allowance, to proceed to allowance. And if the Juſtice of a forreſt doth ſtay overlong in allowing of a liberty that is claimed, then may the party grieved purchaſe the Kings Writ of allowance, directed to the Juſtice of the forreſt, commanding him to allow the ſame: The tenor of which Writ doth appear, in Anno 10. Ed. 3:

Itin' Lancaſt. fo. 9. and f. 69.

And it doth appear in the claim of the Abbot of Furneux, that if at one Juſtice-ſeat any claim be allowed, then at another time the ſame allowance may be pleaded, quod nota; and the Record of the allowance ſhall be ſent down by the Writ unto the Juſtices.

Itin. Pickring, fol. 16.

And in like manner, as a man may claim Common appurtenant within a forreſt for all manner of beaſts that are commonable by preſcription: ſo a claim made by good title of preſcription for Common appendant, or Common per viſinage within a forreſt, is to be allowed.

It doth appear in Anno 21. of E. 3. that the inhabitants of a Town did make their claim before the Juſtice of the forreſt of Pickring, to chuſe a Woodward of a certain wood within the ſame forreſt, and alſo to have the windfall-wood there, and reaſonable Common of eſtovers in the ſaid wood, as appendant unto the inhabitants of the ſame Town, and they had their claim allowed them: quod nota: and therefore it ſeemeth, in like manner, they may preſcribe to have Common appendant unto certain land belonging unto the inhabitants of a Town for beaſts commonable within a forreſt that are Levant and Couchant within the ſame.

Michaelis, 21. E. 3. fo. 49. p. 70

So a man may have alſo Common in Groſſe within a forreſt, by the grant of the King, or the owner of the forreſt, as it doth appear in Itinere Eborac' in Anno 23. H. 3. where one W. being Lord and owner of a forreſt, did by

M. Fitzh. in titulo Common 25.

his

his deed grant unto an Abbot Common of paſture for forty Mares, and eight Stallions, within the foreſt of L. and becauſe that the words of the grant were, Quòd Abbas præd. habeat ubique paſturam in Foreſta; therefore it was there adjudged, that the grantor, that was the owner of the foreſt could not incloſe any part of the ſame: by this it doth appear, that a man may have Common in Groſſe within a foreſt: ſo that he that hath a good title of preſcription for to have Common appurtenant, Common appendant, or, Common per viſinage, for beaſts Commonable within a Foreſt, according to his preſcription, by the Laws of the Foreſt; for theſe three ſorts of Common are only by preſcription.

And he that hath Common in Groſſe within a Foreſt may likewiſe uſe and enjoy his Common there, according to his deed and grant made of the ſame; for Common in groſſe is by deed only, and not by preſcription. But it ſeemeth as well by the claim of the Abbot of Rival, as by divers other claims, that after a liberty is granted of any thing within the Foreſt, if the grantee do not uſe the ſame continually, then the Non-uſer ſhall be inquired, for ſuch Non-uſer is good cauſe of ſeiſer. Itin. Pickring, fol. 15. 17. 18.

And if any man do make a claim for any liberty or profit apender within the Foreſt, before the Juſtice of the Foreſt, and after make default, there the liberty or profit ſhall be ſeiſed into the Kings hands; for that ſuch a default is cauſe of ſeiſure, in caſu domini de Gerſingham and others. Itiner. Lancaſt. fo. 5.

And if a man do claim by inheritance or otherwiſe, any profit apender within the Foreſt, as Common of Eſtovers, or Common of paſture, or ſuch like, in this Caſe the trial ſhall be by the Foreſters, Verderors, and Regardors, but not by the Agiſtors, prout patet, &c. In caſe that the matter of the claim do require a trial by Itin. Pickring, fol. 15.

the Country, there the conclusion of the pleader shall be, Et hoc paratus est verificare prout Curia &c. Ideo inquiratur inde veritas per ministros ejusdem Forestæ. And in this Case, the Verderors, Regardors, and Agistors, shall only try the Title; but yet notwithstanding, you shall see very many presidents, that when the Entry hath been, Et hoc petit quod inquiratur per ministros ejusdem Forestæ, &c. that this hath immediately ensued, viz. & quia videtur Curiæ huic, quod expedit & necesse est ad inquirendum tam per ministros Forestæ prædictæ, quam per alios probos & legales homines, &c. And thus you may see, that it is in the election of the Justices, whether that the ministers of the Forest shall be impanelled with others, to try the Title of a claim, or only themselves alone; but Quære, if there be any president, that the Country alone hath tried any Title of claim without the Ministers of the Forest, for I do not find any such.

Lancast. f. 1, 3, 4.

Assisa forestæ de Pickring, fol. 10. 15.

It appeareth by the Assises of Pickring, in the claim of John Melsa, and also in the claim of the Abbot of Merival, that they that will make any claim before the Justices of the Forest at a Justice-seat, as for Common of pasture, or Common of Estovers, or any other profit apprender within the forest, they must put in their claim the first day of the same Justice-seat, or else at any day after their claim shall not be received without a fine for the same; and then when any claim is once put in, if the same be in any point faulty, if they will amend their claim, then they must make a fine for the same: By the Statute of 17. Car. 1. cap. 16. The tenants, owners and occupiers, and every of them, of lands and tenements, which shall be excluded and left out of the meets, mers, limits or bounds of the forests, to be returned and certified by vertue of the Commissions (which by that Statute are to be granted) shall or may use and enjoy

joy such Common, and other profits, and easements within the forest, as antiently or accustomably they have used and enjoyed, any thing in that Statute contained, or any Act or Ordinance made, Anno 33. E. 1. or any Custom or Law of the Forest, or any other matter or thing to the contrary thereof notwithstanding.

5. Who ought not to have Common within the Forest.

AND even as he that hath a Charter, or other title of prescription, to have Common within a forest, in any of those degrees aforesaid, may lawfully use and enjoy the same accordingly by the Laws of the forest, so on the contrary part, he that hath neither Charter to Common within the forest, nor can prescribe to have Common there, in any of those three degrees aforesaid, is not allowed by the forest Laws to Common within a forest.

6. What beasts are commonable within the Forest, and what not.

AND as I do take it, all manner of beasts are accompted commonable within a forest, Geese, Goats, Sheep, and Swine only excepted; for these are not allowed to have Common within a forest; neither may any man prescribe to have Common for these within a forest, because that such a prescription can have no lawful beginning: for, to suffer such beasts to common within a forest, Est ad magnum nocumentum ferarum Forestæ. But Coke saith, a man may have common for sheep there by prescription, Bulst. 3 part 213. Co. 4. Inst. 298. The Prior of Wickham prescribed to have Common in the forest of Pickring, pro omnibus bestiis suis ex-

Dier, fol. 70. p. 39. 25. Assiz. p. 8. 37. H. 6. f. 34. p. 10.

Bulst. 3. part 213.

exceptis Caprellis, before the Justices in Eyre, which being found to be true was allowed, 8. E. 3. 31.

7. Of surchargers of the Forest, and who is a surcharger by the Law.

HAving declared, already, who may have Common within a forest, and who may not have Common there, with what beasts they may Common there, and with what beasts they may not Common there, and in what manner they may challenge their Common, and when they are to make their claim for the same: now it is necessary to declare with what number of beasts every man may common; for he that doth common with more beasts then he hath right to common withall in the forest, is accompted a surcharger by the Law, and such a surcharger is a trespasser of the forest; and therefore punishable: for, by the surcharging of the forest with more beasts then they may Common withall, the wild beasts of the forest are put to exile from thence.

In lib. Assisar. 22. p. 65. And if any man that hath Common appurtenant, or Common appendant, within a forest, to a certain number of beasts, doth common there with more beasts then his number that he ought to common there doth come unto, then such a Commoner is a surcharger of the forest, as he is a surcharger at the Common Law.

In libro assisar. 22. p. 65. And if a man have Common in Grosse by a specialty, to common with a certain number of beasts within a forest, such Commoner in grosse may use his Common according to his specialty; but if he do common in the forest with more beasts then he ought to do by his specialty, then such a Commoner is a surcharger by the Common Law, and so is he also by the Forest Law.

In lib. assisar. 22. p. 65. At the Common Law, if a man have Common appurtenant, or Common by specialty, to common in a certain place

place with his beasts sans number, without number, he shall not be accompted a surcharger, nor in a writ of admeasurement he shall not be admeasured: but it seemeth by the Forest Law, that if he that hath common within a Forest to common there sans number, do surcharge the common with so many beasts, that the wild beasts of the Kings forest cannot have sufficient feed there, then such a Commoner in a forest shall be accompted a surcharger, and shall be punished as a surcharger of the Kings forest: so that he that hath a specialty to common within the Kings forest with his beasts sans number, yet it is to be understood by that word sans number, that he must common with such a number of beasts there, that the wild beasts of the Kings forest may have also sufficient feed for them left there besides. M. Hesket, f. 26

And this may seem to be law, by the same reason that Brooke Justice of the Common Pleas did alledge in 12. of H. 2. where he saith, That if a man do grant common without number, yet the grantee may not put in so many cattel to common there, but that the grantor may still have sufficient common for himself in the same land to common with the beasts; for otherwise the grantee is a surcharger: Eadem ratione, he that hath common in grosse within a forest, sans number, yet he must not common there with so many beasts, but that the wild beasts of the Forest may still have sufficient herbage left remaining for their food; for if any man do otherwise, he shall be accompted a surcharger of the Forest. And in like manner it is of him, that will claim Common appurtenant within a Forest, for beasts without number; yet as I think, in mine own opinion, by the same reason, he is to use his Common with such number of beasts, that the wild beasts of the Forest may have sufficient for their feed left remaining, for otherwise he is to be accompted a Surcharger of the Forest; and so he that Trin. 12. H. 8. fol. 2. p. 2. lincs 21. Dier, fol. 80. p. 59. in the Case of Stow Park,

Hil.an.8. H.6. f.26.p.16.

hath Common appurtenant, Common appendant, Common per viſinage, or, Common in Groſſe within a Foreſt, if he do common with more beaſts then he ought to do, he is by the Law accompted a ſurcharger of the Foreſt. But now, here it may be aſked by ſome, how ſhall it be knowen who be ſurchargers of the Foreſt, and who be not, becauſe there is no certain rate knowen, what number of beaſts any one Commoner within the Foreſt may Common withall. To this I anſwer, that it is eaſie to be knowen, who is a ſurcharger of the Foreſt, by this means, Firſt, to make a perfect eſtimate of the number of Acres that the place of Common ſurcharged doth contain, and then to ſet down how many Pariſhes, Villages, or Hamlets, have right of Common in the ſame place, and likewiſe then to make a perfect eſtimate, what number of meſſuages and cottages there are in every of them, and what land every of them have belonging unto every meſſuage, or cottage, and then by knowing the certainty of the number of beaſts that there are uſually fed upon the Common, whereby the ſame is ſurcharged, a perfect eſtimate is to be made ratably, what number of beaſts every man that hath right of Common in the ſame, may keep according to his quantity of land that he holdeth, reſerving ſufficient feed there for the wild beaſts of the Foreſt: and this being done, he that is found to have had more beaſts Commoning within the waſte ſoil of the Foreſt then his rate doth allow him to keep, he is a ſurcharger of the Foreſt. And this courſe is obſerved at the Common Law, to avoid ſurcharging of Common, amongſt Commoners, by a Writ of Admeaſurement of paſture. And as Commoners at the Common Law, that do finde themſelves grieved by ſurcharging of their Common, may ſue out a writ of Admeaſurement, directed to the Sheriff of the Shire, where they do claim Common, and

Libro intrationis, fol.23.b.in admeaſurement 1.

Libro intrationis, fol.23. in admeaſurement de paſt.

and thereby cause every Commoner that hath Common there, to be admeasured, and to common with no more beasts then his rate will allow him: even so, upon the complaint of the officers of the Forest, that the waste soil of the Forest is surcharged with so many beasts commoning there, that the Deer can have no seed left for them, then a Commission may be granted out of the Kings Court of Chancery, directed unto the Kings Lieutenant of the same Forest, and to the Verderors, and chief Foresters of the same Forest, commanding them, by vertue thereof, to inquire by the oath of good and lawful men, what number of Acres the place of Common, wherein the surcharge is supposed to be made, doth contain, and what number of beasts there are commoning in the same, and whose beasts they are, what Parishes, Villages, and Hamlets, of right ought to have Common in the same, what number of messuages and cottages there are within every of them, and what number of Acres of land every of them have belonging thereunto, and then by considering what number of beasts may reasonably Common within the same; and yet leave sufficient seed for the Deer, they shall rate and apportion every man, what number of beasts, and what sort of beasts every man according to his portion may keep; and then he that doth keep, or, he that hath kept more beasts then he ought to have kept according to that rate, is to be accompted a surcharger of the Forest; for every man must common there in such sort that the Deer may have sufficient pasture left for their seed, for otherwise every man that doth common there with more beasts then he may do after such a rate that the Deer may have sufficient seed left besides for them, is by the Law a surcharger of the Forest.

Libro iuratio-nis ibid.

8. How and in what manner a surcharger of the Forest is to be punished by the Laws of the Forest.

BUt now, he that is found to be a surcharger of the Forest, how and in what manner he is to be punished for the same, that resteth yet to be spoken of. And for that, it is to be understood, that amongst commoners at the Common Law, if one of them do surcharge the common with more beasts then he ought to keep, according to his tenure or portion, to the hurt of all the residue of the commoners, if they that do find themselves griebed do bring their Writ of Admeasurement of pasture, then every commoner shall be admeasured thereby, and rated to a certain number of beasts, and what beasts every man may common withall: and if that after such an admeasurement made by the Sheriffe, any of those commoners, do eftsoons surcharge the same common, then any of the other commoners that are thereby griebed, may bring a Writ De secunda superoneratione pasturæ, directed to the Sheriff (reciting therein the first admeasurement) commanding him that he shall go unto the said common whereas the surcharge is supposed to be made, and there diligently to inquire by the oath of good and lawful men: and if the Sheriff upon such inquiry taken shall finde a second Surcharge there to be made, then the Surcharger shall pay dammages unto the party griebed; and also the overplus of the beasts that are found to Surcharge the Common shall be forfeited to the King by the Statute of Westminster the second. But whether the beasts of those that do Surcharge the waste soil of the Kings Forest (I mean the beasts that are Commoning there more then there ought to be) be forfeited to the King, or not, by the Forest

Register, f. 157. in titulo de admensuratione pasturæ.

Fitzh. Nat. breviium, f. 126. H.

Westm. 2. ca. 8.

Foreſt Law, Quære, for in all the Iters and Aſſiſes of Pickring and Lancaſter, I can finde no preſident, that a Surcharger of the Foreſt ſhall forfeit his beaſts that do ſurcharge the Foreſt. But it doth appear in the Aſſiſes of Pickring, in Anno 10. of Edward the Third, that a Surcharger of the Foreſt ſhall be indicted for the ſame, and make his fine to the King for that offence. But yet it may ſeem to ſtand with reaſon, that after that a Commiſſion, in the nature of a writ of admeaſurement at the Common Law, hath been granted out to ſuch Commiſſioners and Officers of the Foreſt, as aforeſaid, to avoid ſurcharging of the Foreſt, and an admeaſurement thereof made, and every man rated according to his portion, what beaſts, and what number of every of them he may common withall, if afterwards any Commoner there do ſurcharge the Common againe, with a greater number then he ought by his rate and portion to keep there, that then thoſe beaſts that are ſo found commoning there above his number, ſhall be forfeited. But whether this be Law in a Foreſt, or not, quære, for I do doubt, but I do find in many places in the Aſſiſes of Lancaſter and Pickring, that the ſurchargers of the Foreſt were indicted for the ſame, and thereupon impriſoned, and made their fine for that offence. And it doth appear in my Lord Diers book, in the caſe of Stow Park, where the grantee of the ſame, having alſo the Agiſtment of the Park granted him, did by Agiſting of more beaſts then he ought to Agiſt there, ſurcharge the Park, ſo that the Deer could not have ſufficient feed left for them there, and there it was not fully agreed, what remedy the grantor was to have, but left with a quære.

Aſſiſa foreſtæ de Pickring, an. 10. E. 3. f. 12.

Aſſiſa foreſtæ de Pickring, fol. 12.

Dyer, fol. 89. P. 59.

By the Foreſt Law, he that hath or claimeth to have any liberty or profit within a Foreſt, by grant or by title

tle of prescription, and doth abuse the same by using of it in any other order then his grant or title of prescription doth warrant; as in the case of the Prior of Lancaster, for taking of Viridem Boscum, pro mortuo Bosco. And likewise in the case of the Burgesses of Lancaster, for their claim for such abuser, there doth grow seiser; and for the abusing of any such liberty, the same liberty must be seized into the Kings hands, and he that hath so abused the same is to make his fine for it, and so to have his liberty again. Therefore quære, if he that hath a lawful title of prescription for to common within a Forest, and doth abuse the same, by surcharging of the Forest with more beasts then he ought to common withall there, if this be cause of seisure of his common into the Kings hands, or not?

Ass. Lanc. f. 3. 64

CHAP. XV.

1 *Of the Drifts of the Forest.*
2 *At what time of the year the Forest shall be Driven.*
3 *How often in every year the Forest shall be driven.*
4 *For what cause the Forest shall be so Driven.*
5 *By whom the Forest shall be Driven.*
6 *In what manner the Drifts of the Forest shall be made.*
7 *In what Places and Forests Drifts shall be so made.*
8 *Of what Cattle or Beasts they are to make their Drifts of.*

1 Of the Drifts of the Forest.

Co. 4. Inst. 305. THe Officers of the Kings Forest do use to View the Waste soil of the Forest in every place where there is commoning with Beasts, to the intent to avoid the surcharging of the same with many

many Beasts by those that have right of common therein, and also to avoid the commoning of forreigners, that have no right of common at all within the Forest.

2 At what time of the year the Forest shall be driven.

It seemeth by the Assises of the Forest of Pickring and Lancaster, that the Officers of the Forest there did use to make two Drifts of their Forest every year; the first of those Drifts was made yearly fifteen days before Midsummer, at the beginning of the Fence moneth, because that in that moneth no man might have any beasts commoning within the waste soil of the Forest; and then by that Drift the Forest was clean emptied and avoided of all Beasts and Cattle, during the Fence moneth onely: And every man that had any Beasts or Cattel commoning within the Forest at that time was forced at that Drift to come and challenge their Beasts, and to take them away; for else they were taken and seised by the Officers of the Forest, to the use of the King, as Strays of the Forest. And if the cattell of any Forreigners that were dwelling out of the limits and bounds of the Forest, were found there commoning, that had no right of Common, then the owners of those Beasts were punished according to the Law in that behalf. The second Drift of the Forest was used to be made about Holy-rood-day, when that the Officers of the Kings Forest did begin to Agist the Kings Demesnewoods; and then at that time all Beasts and Cattel, of all sorts whatsoever they were, that were then found within the same Common, were taken by the Officers of the said Forest, and driven to some convenient place, to be impounded there near unto adjoyning; and then by the Officers, that is to say, by the Under-forresters,

Itiner. Lancast. fo. 123.

Itiner. Lancast. fo. 124.

sters, Walkers, and Woodwards of every Parish, Village and Hamlet, in every Ward warnidg was given, that every man that had any Cattel or Beasts Commoning within Eastmore, in such a Forest, that they should forthwith repair to such a place, where their Beasts were then impounded: and then upon such warning and notice given, every man that had any Beasts commoning within the same Forest, did forthwith come and fetch away their Beasts; and upon the delibery of their Cattel by the Officers of the Forest, a perfect Roll thereof was kept, what number of Beasts every Commoner had, and what Beasts they were, of what place he was abiding, what free land he had of his own, or of any other mans in his occupation or Tenure: and this order was yearly observed and kept, whereby it was not onely known who had right of Common there, and with what number of Beasts every man might Common, and who was a surcharger; but also who did use to Agist the Beasts of any strangers or forreigners within the Forest; And what forreigners had any Cattel commoning within the Forest; for by the Laws of the Forest no forreigner may common within the Forest without a Grant or Charter from the King so to do; and if the Beasts or Cattel of any Forreigner be found feeding and commoning within the waste soil of the Forest, which have escaped thither by chance, then the owner of those Beasts is to be amerced, for every sort of those Beasts 1 d. for the first offence; and if they be found to have escaped again the second time, then the owner of them is likewise to be amerced for every sort 1 d. But if they be found so offending again the third time, then those Beasts are forfeited to the King, and then they shall be seised by the Forresters, and delivered to the Verderers of the same Forest; and this is to be entered into their Rolls of the Forest, that the King may be answered of the

Assisa forestæ de Pickering, f. 15, 17. 19.

the value thereof: but this seemeth to be Law for those Beasts of Forreigners that do escape of themselves into the Forest, without the voluntary drift or procurement of the owner of those Beasts: But if such a forreigner of his own voluntary will do drive his Beasts into the Kings Forest to Common there, quære if those Beasts be not forfeited for the first offence. It standeth with reason, that the Beasts and Cattel of such as are forreiners, dwelling out of the Forest, and having no free land in their own Tenure within the Forest, should be barred to common within the waste soil of the Forest; for the Common within the Forest is of right belonging unto the inhabitants, and to such as have lands and tenements in their tenure and occupation within the Forest; for they only are under the bondage and burthen of the Forest; for in their Corn, Meadows and Pastures the Deer must have their repair and quiet feed; and for that cause they are to take the benefit of the Common for it, according to this ground at the Common Law, Qui sentit onus, sentire debet & commodum, & è contra, he that beareth the burthen and charge ought also to tast of the benefit thereof.

Assisa & consuetudines Forestæ, Art. 15.

In decretali Bonifacii, 8.

3 How often in every year the Forest shall be driven.

And although that the Officers of the Forest of Lancaster, did use to drive their Forest twice in the year, as aforesaid; yet there is no doubt but that upon any reasonable cause the Officers of every Forest may drive their Forests oftner if they will, and that for the benefit of the King in the avoiding of Surchargers of the Forest, and of forreigners which common there, having no right of Common. The Officers of the Forest may drive the Common as often as need shall require.

Itin' Lancast. fo. 9.

It

32.H.8.c.13. It is appointed by the Statute of 32. of King H. 8. that all Forests within the Realm of England, and Wales, and the Marches of the same, and every of them, shall be driven yearly at the feast of S. Michael the Archangel, or within fifteen days next after.

32.H.8.13. And also it doth appear by the same Statute of 32. of King Henry the 8. ca. 13. that every Forest and Chase, &c. within the Realm of England, Wales, and the Marches of the same, and every of them, may be driven at any other season and time of the year, whensoever, and as often as they shall think meet and convenient.

4. For what cause the Forest shall be so driven:

AND it seemeth that Forests are to be driven, chiefly for three causes; the first is, for the avoiding of surcharging of the Common within every Forest, by such as have right of Common there, that no Commoner do Common with more beasts then he may lawfully do. Secondly, for the avoiding of Forreiners to Common there that have no right of Common at all within the Forest. And thirdly, to the end that no beasts be suffered to Common within the Forest, but such as are commonable. Oxen, Cows, Sheep, nor Swine, are not beasts commonable within a Forest, as already before hath been declared; and by the Statute 32.H.8.c.13. of 32. of King H. 8. Stoned horses, being above the age of two years, and being not of the altitude and heighth of 15. handfuls high, to be measured from the lowest part of the hoof of the forefoot, unto the highest part of the withers, and every handful to contain four inches of the Standard, are forbidden to Common within any Forest or Chase being within any of the Shires and Territories of Norfolk, Suffolk, Cambridge, Buckingham, Huntington,

tingron, Eſſex Kent, Southamſhire, Northwiltſhire, Oxford, Berke, Worceſter, Glouceſter, Somerſet, Northwales, Southwales, Bedford, Warwick, Northampton, Yorkſhire, Cheſhire, Staffordſhire, the County of the City of York, the Town and Liberty of Glouceſter, the County of the Town of Kingſton upon Hull, the County Palatine of Lancaſter, the County of Salop, Leiceſter, Hertford, and Lincoln: ſo that now by the Statute, ſuch horſes are not beaſts commonable within any Foreſt or Chaſe, in any of thoſe Shires aforeſaid neither: and if ſuch be found in any Foreſt or Chaſe, as aforeſaid, upon any drift thereof made, or otherwiſe, they are forfeited, as it doth appear by the ſaid Statute. Therefore ſee the ſaid Statute, and the Statute of 8. E: cap. 8.

5. By whom the Foreſt ſhall be driven.

IT doth appear by the Aſſiſes of Lancaſter and Pickring Foreſt, that there the drifts of the Foreſt were always made by all the Officers of attendance of the Foreſt, that is to ſay, by the Foreſters, Verderors, Regardors, Agiſtors, Woodwards, the Bayliff, or Bayliffs, and the four men, and the Rebe of every Town: and it ſeemeth very requiſite and neceſſary that all thoſe Officers ſhould of neceſſity be at every drift of the Foreſt, as well for their help and aſſiſtance in the driving of the ſame, as alſo for the giving of notice one unto another, who are to have Common in every Town, and with what number of beaſts, and with what beaſts, and alſo who are forreiners, and whoſe beaſts they are which they ſhall find within the ſame Common, whereby the owners may have notice thereof. Pickring, f. 81.

By the Statute of 31. of King Hen. 8. it is appointed, that all Foreſts and Chaſes within the Realm of England

land and Wales and the Marches of the same, and every of them, shall be driven yearly at the feast of Saint Michael the Archangel, or within fifteen days then next after, and there, that drift is appointed to be made by the Officers of every Forest or Chase only, and by no other; and all drifts that are made at any other time or season of the year, in any Forest or Chase, the same shall be made and driven by the Officers thereof, and also by the Constable, Bailiffs, Headboroughs, Burholders and Tithing-men, and every of them, within the limits of their offices, quod nota.

6. In what manner the Drifts of the Forest shall be made.

In what manner the Drifts of the Forest are to be made, is shewed and declared by the Assises of Lancaster, in Anno 10. E. 3. where it doth appear, that at a certain day appointed by the general agreement of all the Officers of the Forest, the Verderors do divide themselves every one unto his own ward and precinct, and every Verderor to call unto him all other Officers of that ward or division, and then proceeding in their drifts in every several division, until that they have gone throughout all the whole Forest in every part where is any common waste soil.

Assi. forestæ Lanc. f. 69.

7. In what places, and Forests, Drifts shall be so made.

And this course may be used in all Forests and Chases within this Realm where there are any Dear or other wild beasts: but of necessity there must be drifts made either in this sort, or else in such sort as drifts have usually been made, in every Forest and Chase,

Chase, where there are any wild beasts of Venery, or of Chase, remaining, for the government of the Commons within the same, and the government of the Herbage thereof for the wild beasts therein. By the Statute aforesaid of 32. of King H 8. Drifts are appointed to be made in all Forests and Chases in England and Wales, and in the Marches of the same, at the feast of S. Michael or within fifteen days next after, and at other times as need shall require. 32.H.8.c.13.

8. Of what cattel, or beasts, they are to make their drifts.

AND in these drifts of the Forests and Chases aforesaid, all the beasts and cattel, whatsoeber beasts or cattel they be that be there found commoning, or whose soeber they be, they must all be driben out of the common, to some conbenient place, to pound nèr hand, where they may be detained until that the owners shall come to challenge their own beasts and cattel, as aforesaid: and then ebery Commoner, according to his number with beasts Commonable, may put them to pasture and feeding again in the Common where they were.

CHAP. XVI.

1. *Of keeping of dogs within a Forest.*
2. *Who may keep dogs within a forest.*
3. *What dogs may be kept within a forest.*
4. *What dogs may not be kept within a forest.*
5. *Of hambling or expeditating of dogs within a forest, and to what end.*
6. *What dogs shall be expeditated.*
7. *By whom they are to be expeditated.*
8. *In what manner they are to be expeditated.*
9. *In what places dogs are to be expediated.*
10. *What forfeiture there doth grow to the King for keeping of dogs unexpeditated within a forest.*
11. *Who shall be chargeable to pay the same forfeiture, and in what manner.*
12. *Whereof the same doth take the name of expeditating or Hambling.*

1. Of keeping of Dogs within a Forest.

THe Laws of the Forest do so greatly regard the necessary use and service of Dogs, for the safety of mens houses and goods that do dwell within Forests; that therefore in some sort, some manner of dogs are tolerable to be kept in Forests, by every man: and again, some sorts of Dogs are not tolerable to be kept within a Forest, but only do certain men.

2. Who may keep Dogs within a Forest.

ANd therefore it is to be understood, that every dweller and inhabitant within any Forest of any worth

worth may keep a Mastive about his house, for the defence of his house and his goods; so that every such Mastive be lawfully expeditated and lawed according to the Assises of the Forest; but most chiefly Farmers and wealthy Freeholders. It doth appear by the Assises of the Forest of King Henry the Second, called the Assises of Woodstock, that Mastives shall be expeditated in every Forest where the wild beasts have any peace; whereby it is to be gathered, that therefore it is lawful for men that do dwell within such a Forest where the wild beasts have a peace, to keep Mastives there; for else it were in vain to have them expeditated. Assisa de Woodstock, H. 2. cap. 6.

And also it doth appear by Charta de Foresta, that the inquiry for the lawing and expeditating of Mastives or Dogs within the Kings Forest shall be made when the Regard of the Forest is made, and that is, every third year; and then the lawing of Mastives shall be done by the view and testimony of honest men, and not otherwise; therefore it is lawful for men that do dwell within Forests to keep Mastives being lawed or expeditated. And in the Assises and Customes of the Forest, made and established in An. 6. of Ed. the 1. it is ordained, Quod si quis Mastivus inventus fuerit super aliquam feram, & mutilatus fuerit, ipse cujus erat, quietus erit de illo facto, if any Mastive be found upon any Deer, the same Mastive being expeditated, then he, whose Mastive the same is, shall be quit of that deed. By this it doth appear, that it is lawful for the inhabitants in Forests to keep Mastives that are expeditated and lawed; yea although that such Mastives do sometimes chance to fasten upon a Deer. And here note, that this word Mutilatus is not taken nor understood for Muffelled, as some do affirm, but for maimed, lamed, or expeditated, according to the Assises and Laws of the Forest, for there is no law to muffel Mastives. And again, in the Charta de foresta, artic. 6. Assisa & consuetudines foreste, art. 9.

same Assises and Customes of the Forest it is ordained, Quod nullus messarius ducat secum Mastivum magnum ad fugandum feras domini regis, &c. No Mower shall bring with him any great Mastive to the field, to drive away the Kings Deer, but little Dogs to look to things without the covert. By this it is to be gathered, that men that do dwell within Forest may keep Mastives about their houses being expeditated, although that they may not carry them to the field with them to hunt or fear away the Deer. And in the Charter of the Forest in the sixth Article, the words are, Et ille cujus Canis inventus fuerit non expeditatus, det pro misericordia, tres solidos, that is to say, and he whose Mastive shall be found remaining within the Forest not being expeditated, shall be amerced for the keeping of such a Mastive unexpeditated, three shillings. By this it doth manifestly appear that Mastives may be kept within the Forest being expeditated, but not otherwise, and this Law is to be understood of Mastives only within the Forest, for the Mastives that are out of the Forest, they are out of the danger of this Law; and the words in the beginning of the sixth article of Charta de Foresta, are these, Inquisitio vel visus de expeditatione Canum existentium in Foresta nostra, de cetero fiat quando fieri debet regardum, &c. The inquiry and view of the expeditating of Mastives remaining within our Forest (saith the King) from henceforth shall be made, when the regard is made, &c. Hereby it is plainly proved by these words, The expeditating of Mastives remaining within our Forest, that mastibes being expeditated may lawfully be kept within Forests: and because there is no particular Law to appoint any difference of men within Forests, who may keep these Mastives specially; therefore it is to be understood generally that every Gentleman, Husbandman, Farmer and Houlholder

Assisa & consuetudines foresteæ, art. 16.

Charta de foresta, artic. 6.

Charta de foresta, artic. 6.

holder of any worth, dwelling within any Foreſt, may keep Maſtives being expeditated, according to the Aſſiſe of the Foreſt, for the ſafe-gard of their houſes and goods.

3. What dogs may be kept within a Foreſt.

There are two ſorts of dogs that the Laws of the Foreſt do generally allow to be kept within Foreſts without danger, that is to ſay, the Maſtibe being expeditated and lawed, and alſo, the little dogs which are ſpoken of in the 32. Canon of Canutus Laws, Quia manifeſtè conſtat in iis nihil eſſe periculi, cuilibet licebit ſine genuſciſione eos cuſtodire; becauſe, ſaith he, it doth manifeſtly appear, that in them there is no danger, it ſhall be lawful for every man to keep ſuch little dogs without lawing. And again, ſuch little Dogs are ſpoken of in the Aſſiſes and Cuſtoms of the Foreſt, in the 16. Article, in theſe words, Nullus meſſarius ducat ſecum Maſtivum magnum ad fugandum feras Domini Regis, ſed parvos catulos ad expectandum extra coopertum, No Mower or Harveſt-man ſhall bring any great Maſtibe with him to the field, to drive away the Kings Deer, but little dogs to look to things without the covert: By this it is proved, that ſuch little dogs may be kept within a Foreſt, and it is lawful for Mowers and Harveſt-men to bring them to the field with them. And there are alſo two other ſorts of dogs that may be kept by ſome men in certain places within ſome Foreſts, and thoſe are Greyhounds and Maſtibes unexpeditated. It appeareth in the Aſſiſes of Pickring, Anno 10. Ed. 3. that one made his claim to be quit of Footgeld, which is to keep dogs within the Foreſt unlawed, without any amerciaments, fine or forfeiture, and that was allowed him by reaſon of a grant made unto him, or to

Canutus, Canon 32.

Aſſiſa & conſuetudines Foreſtæ, Art. 16.

Aſſiſa foreſtæ de Pickring, fol. 17.

some of his ancestors: but Quære if a man may make such a claim by prescription only; for it seemeth that no man may; for without a Charter such a prescription cannot have any lawful beginning.

In the Assises and Customs of the Forest, in the 17. Article, there is mention made of keeping of Mastives in Forests unexpeditated, and also of Greyhounds, in these words, De his qui clamant habere libertates sicut Canes inexpeditatos & Leporarios infra metas Forestæ, nihil eis faciendum sine warranto domini regis vel Justiciariorum suorum, Of those which claim to have any Liberties or Priviledges, as to keep dogs unlawed, and Greyhounds within the bounds and limits of the Forest, there shall be nothing done unto them, without the Kings warrant, or the warrant of his Justices of the Forest. By this it appeareth, that he that hath a lawful claim by good Title may keep Mastives within a Forest unexpeditated, and by such a like claime he may keep Greyhounds within a Forest also; but it seemeth that such a claim must be by reason of some grant from the King, rather then by any prescription, Sed de hoc quære.

Assisa & consuetudines forestæ, art. 17.

4. What Dogs may not be kept within a Forest.

And therefore within a Forest no Dogs may be kept, without a good claim, by reason of a grant from the King, or other owner of the Forest, but only Mastives expeditated, and such little Dogs, as aforesaid; for Greyhounds and Spaniels are generally forbidden to be kept within a Forest: for, as it hath been declared already, Mastives may not be kept within Forests except that they be lawed; and yet there is lesse danger in Mastives then there is in Greyhounds; and there is no Law to expeditate Greyhounds, because that they

they are not to be kept in a Forest, but only by a grant from the King.

In the Assises and Customs of the Forest, it is ordained that those that do claim any Liberties or Priviledges, as to keep Dogs unexpeditated, and to keep Greyhounds within the bounds of the Forest, that nothing shall be done unto them that have such claime, without the Kings warrant, or the warrant of the Justices of the Forest. By this it appeareth, that Greyhounds may not be kept within a Forest without a good claim or warrant, no more then Mastives may unexpeditated: for if it were lawful for men to keep Greyhounds in the Forest without a good claim for the same, it were needless to make a claim for it; and so in like sort of other things. Assisa & consuetudines forestæ, art. 17.

And it doth appear by sundry claims, in the Assises and Iters of Pickring, that men have claimed there, to Hawk, and Hunt the Hare, within certain liberties, and also to keep Spaniels. By this it is to be gathered, that therefore Spaniels are not lawful to be kept within a Forest without a claim for the same: for if they were, then it were in vain to make a claim for that thing which were lawful otherwise. It doth appear by the Laws of Canutus, in his 31. Canon, Quòd nullus mediocris habebit, nec custodiet Canes quos Angli Greyhounds appellant, &c. that no mean man shall have nor keep those Dogs which English men do call Greyhounds, within the Forest; so that it seemeth, that even from the first beginning of Forest-Laws, Greyhounds have always been forbidden to be kept in Forests. Pickring, f. 129. Canutus, Canon 31.

5. Of Hambling or expeditating of Dogs within a Forest, and to what end.

THose Dogs that are generally to be kept within a Forest, must either be such as are not able of themselves to hurt the Deer, or else such Dogs as the Law hath appointed to be lawed, and made unable to hurt the Deer: which kind of lawing of dogs is now called Expeditating of dogs; but the antient Foresters were wont to call it Hambling of dogs: and this lawing of dogs was first ordained for the safety and quiet of the deer and wild beasts. And this is to be inquired of by the Regardors of the Forest every third year, what dogs be expeditated, and what dogs are not; and if there be any dogs kept within the Forest that are not expeditated, the Regarders are to present the same, and who doth keep any such dogs, and upon their presentment, such dogs are to be lawed, and also the owners of such dogs are to be amerced three shillings for the keeping of such dogs unlawed; and every third year upon the presentment and testimony of the Regarders, there ought to be a general expeditation of the Mastives in every Ward or Bailiwick throughout all the Forest.

6. What Dogs shall be expeditated.

BUt now here it may be asked, what dogs they are that shall be lawed or expeditated, because the words of Charta de Foresta, in the fifth article, are, Inquisitio vel visus de expeditatione canum existentium in Foresta, &c. the inquiry or view of the expeditating of dogs within the Forest, &c. and doth not there declare what sort of dogs; and this word Canis, a dog, may be taken

Charta de foresta, artic. 6.

taken for any kind of dog; and therefore it may seem doubtful to some, what sort of dogs they are only that are to be expeditated, seeing that the letter of the Law is so generally spoken of all dogs: and likewise in another place, in the same Article, the words are, Et ille cujus Canis inventus fuerit, &c. and he whose dog shall be found then unexpeditated, shall be amerced for the same three shillings; here this word Canis may be taken for any kind of dog: And again, in the same Article the words are, Nec expeditentur Canes, neither shall dogs be expeditated, but in such places where they have been accustomed to be expeditated at the time of the first Coronation of King Henry the Second: And in the Assises and Customs of the Forest, in the 17. Article, the words are, De his qui clamant habere libertates, sicut Canes inexpeditatos, &c. of those that claim to have liberties, as dogs unexpeditated: And in all these places this word Canis, without any other addition or difference, is used, being a general word, that may be taken indifferently for all kinde of dogs. To this I answer, that notwithstanding that this word Canis only is used in all these places which may be taken for any manner of dog, yet the same is meant and intended by the Law, for Mastives only, and for no other dogs: for proof hereof, in the said fifth Article of the Charter of the Forest, there is mention made, de expeditatione Canum; and then followeth, Talis autem Expeditatio fiat per assisam communiter usitatam, &c. and saith, such Expeditating or Lawing of dogs shall be made by the assise commonly used, which is meant, the assises of King Henry the second; and then setteth down there the manner how they shall be expeditated, and saith further, that dogs shall not be expeditated, but in places where they have used to be expeditated at the time of the first Coronation of King

Assisa & consuetudines forestæ, art. 17.

Co. 4. Inst. 308.

Henry

Aſſiſa foreſtæ, H. 2. art. 6. called the aſſiſes of Woodſtock.

Henry the Second, ſo that all that whole Article of Charta de Foreſta hath relation only unto the aſſiſes of the ſaid King Hen. the Second, which were before Charta de Foreſta, and then in the aſſiſes of King Hen. the Second, in the fifth Article, it appeareth that this word Canis is meant and intended only for Maſtives, and for no other dogs, for the words there are theſe. Item Rex præcipit quòd expeditatio Maſtivorum fiat ubicunque feræ ſuæ pacem habent vel habere Conſueverunt, alſo the King commandeth that Expeditating of Maſtives ſhall be made in every place where his wild beaſts have a peace, or have uſed to have a peace. Here you may plainly perceive that theſe words, Expeditatio Canum, are explained by theſe words, Expeditatio Maſtivorum; and ſo then it is very plain that this word Canis is meant and intended only for Maſtives, and for no other Dogs. And as this fifth Article in Charta de Foreſta, having relation to a former Law made in the time of King Henry the Second, by which this word Canis is there explained to be meant and intended but only for one ſort of dogs, that is to ſay, for Maſtives and for no other: ſo likewiſe this word Canis in that place is alſo explained, what ſort of dogs the ſame ſhall extend unto, by a later Law made in the fifth year of King E. 1: where the words are, Si quis Maſtivus inventus fuerit ſuper aliquam feram, & mutilatus fuerit, ipſe, cujus canis erat, quietus erit de illo facto: ſi non fuerit mutilatus, ipſe cujus fuerit Maſtivus, erit culpabilis tanquam de manu facto, &c. If any Maſtive that is expeditated ſhall be found upon any Deer, then he whoſe Maſtive the ſame is, ſhall be quit of that deed; but if he be not Expeditated, then the owner of ſuch a Maſtive ſhall be guilty, as if he had done that deed with his own hand. By this it appeareth, that this word Canis is meant and intended only pro Maſtivo; ſo that, although the letter of the Law

Aſſiſa & conſuetudines foreſtæ, art. 9.

be

be general, viz. that dogs ſhall be expeditated, yet in the conſtruction of the Law, it is meant only for the Maſtibe dog, and no other ſort of dogs, and ſo no other dogs are to be expeditated, but the Maſtibes, and ſuch like curres that are of the Maſtibe kinde. Budæus calleth a Maſtibe Moloſſus; in the old Brittiſh ſpeech they do call him a *Maſtethefe*, and by that name they do call all manner of Barking Curres, that do uſe to Bark about mens houſes in the night, becauſe that they do Maze and fear away thiebes from the houſes of their Maſters. But for the aboiding of all manner of ſcruples and doubts, that might ariſe or grow of conſtruction of this word Canis, in the old antient Aſſiſes of the Foreſt that were made before the Charter of the Foreſt, and alſo in the latter Aſſiſes that were made ſince the Charter, they do uſe this barbarous word Maſtivus for a Maſtibe, for the plainer underſtanding of every man: and this word Canis alone without any other word joyned with it may ſeem more properly to be taken for a Maſtibe, then any other kind of dog; for as Ariſtotle ſaith, a dog is called Canis of his ſhrill barking; and there is no dog that doth bark ſo ſhrill, as the Maſtibe doth, nor ſo much. Budæus calleth a Greyhound, Canis venaticus, and alſo in another place, Canis venatorius, and in another place Canis Leporarius: and a Spaniel Canis ſagax, and in another place Canis odoriſequus: ſo that, although that this word Canis may be taken for any kind of dog; yet when the word is uſed alone without any other addition, it is rather to be taken for a Maſtibe, then any other dog, becauſe of his barking. Co. 4 Inſt. 308. Budæus.

7. By

7. By whom such dogs shall be Expeditated.

BUt now, having declared what dogs are to be expeditated, there is yet another question, who shall expeditate those dogs, or by whom they are to be expeditated, for it doth appear by the Charter of the Forest in the sixth Article, that the inquiry or view of the expeditating of dogs within the Forest shall be made every third year, when the Regard shall be made: But he doth not say there, by whom that inquiry or view shall be made, neither by whom these Mastives shall be expeditated. The view and inquiry of the Expeditating of Mastives is to be done by the whole Regard and the Forresters, that do go with the Regarders in the making of their Regard, or by the Regarders themselves; for it doth appear in the thirteenth Article of the charge of the Regard that was made and used in Henry the Seconds time, unto which the Charter of the Forest in this point hath relation, that the Regarders of the Forest shall view all the Mastives within the Forest, whether that they be expeditated and lawed according to the Laws, Customs, and Assises of the Forest, or not. But they are not to Law or Expeditate such Mastives, but only to view them, whether that they be expeditated or not, and to inquire who doth keep such dogs, within the Forest, unexpeditated, and to present at the next Swanimote after they shall have made their Regard, what mastives are kept within the Forest unexpeditated, and who is proper owner of every one of those mastives. But all this while, there is no particular Law that doth expresse or set down, who shall expeditate mastives: wherefore seeing that it is manifest, that mastives are not to be kept within Forests, except that they be expeditated; therefore if

Charta de foresta, artic. 6.

In Capitulo de Regardo facendo, art. 13.

mastives

Mastibes be kept, they must of force be lawed and expeditated; and seeing that there is no certain persons appointed to expeditate them; and yet they may not be expeditated neither, but it must be done according to the Charter and Laws of the Forest, which saith, Et nunc fiat per visum & testimonium legalium hominum, & non aliter: therefore such course must be taken in the execution thereof, as is taken at the Common Law, or in other like Cases by the Forest Laws, and that is, to proceed by a judicial sentence from the Court; for, after that the whole Regard have made such view and inquiry of the Mastibes within the forest, and have delivered unto the Verdorers their presentment of all Mastibes that are kept within the Forest, and whose they are, then the Court of Swanimote, or Court of Attachments, may cause all those Mastibes to be brought before them to the forty day Court; and there the Court may appoint a meet and a convenient man, with such Instruments as are meet for that purpose, to be there ready and to do execution, that is to say, to expeditate them according to the Laws; and being done in this order, it is done Per visum & testimonium legalium hominũ: for in this case the Law of the Forest is like unto the Common Laws; for, at the Common Law, if a Law be made for the punishment of any offence, although that it be not in that Law set down and declared, who shall do the execution thereof, yet the Law of it self doth always appoint the execution thereof unto the discretion of the Court, before whom such offendors shall be lawfully convicted of the offence: as for example, King Edward the Confessor made this Law, Volo, ut omnis homo abstineat a venariis meis, ubicunque pacem eos habere volo, super poenam vitæ. I will that every man shall refrain from Hunting in my Forests, or of my wild beasts, wheresoever I will have

Charta de foresta, art. 6.

In libro Sancti Edwardi Confessoris in Scaccario.

a peace for them, upon pain of losse of life: Here, by this Law it is not declared, nor set down, who shall be the Executioner to put the offendors to death for the same, but that is left unto the discretion of the Justices of the Forest, before whom such offendors shall be tried, for the Law doth intend that such offendors are not to be punished before a lawful trial against them in that behalf be had; and then they before whom such offendors are so tried, they are to appoint who shall do the Execution; for, they are to pronounce the Judgement, and then they are to appoint who shall do the execution of their judgment, and when the same shall be done: and so in this case of the expeditating of mastibes, the law hath appointed that mastibes shall be expeditated, if any be kept within the forest; and although that it be not set down in that law, who shall expeditate them, yet the Law doth appoint that as certain as if it had been there declared & set down; for it is ordained and appointed by the Charter of the forest, that the expeditating of mastibes shall be done by the view and testimony of good and lawful men, & not otherwise: and the inquiry and view of the expeditating of dogs being appointed particularly to be made by the Regarers of the forest, then, after that they have made such view and inquiry, what Mastibes there are remaining within the Forest unexpeditated, and who is the proper owner of every one of them, and of what place he is dwelling, then they being twelve lawful Officers of the Forest, sworn and appointed for that purpose, when that they have made and delivered up their verdict unto the Court of Swanimote, the same Court of Swanimote may cause the Forresters within whose Bailiwick the owners of such Mastibes are remaining or dwelling, to bring all those mastibes before the same court, and there the court shall appoint one to expeditate them according to the assises

Charta de Foresta, art. 6.

ſtes of the Forest in that behalf provided, or else to cause all the foresaid Mastives, and the owners of every one of them, to be brought to the next Court of Attachment, before the Verderers, that shall be holden after such Court of Swanimote, and Inquisition of the Regarders, as aforesaid, and then there the Court shall appoint an executioner in that behalf, to expeditate all those Mastives that are so returned in the Regarders Inquisition to be unexpeditated: and so, to conclude, the Mastives are to be expeditated by such an Officer as the Court shall appoint for that purpose; for the Verderers being Judges of these two Courts, they err to give judgment, and also to award execution, and to see that execution be done: and they are to cause 3 s. to be levied of the goods and cattels of the owners of such Mastives as were returned in the Regarders Inquisition, to have been kept within the Forest unexpeditated, which 3 s. is to be paid unto the Verderers of the same Forest to the use of the King; and they are to enter all this matter in the Rolls of the Forest, and to make an account of the money so received, before the Lord Chief Justice in Eyre at the next Justice-seat.

8. In what manner such dogs shall be expeditated.

THe manner of expeditating of such Mastives, is especially set down and declared in the Charter of the Forest in the firth Article, in these words, Talis autem expeditatio fiat per Assisam communiter usitatam, viz. quod tres ortelli abscindantur sine pellota de pede anteriori; and such expeditating of Mastives shall be done according to the Assises commonly used; (and then doth there further manifest and appoint out the same with a viz.) that is to say, three claws of the fore-foot shall be cut off by the skin: and accordingly the same is now used

Charta de Forestis, artic. 6.

Co. 4 Inst. 308.

used; for the Mastibe being brought to set one of his fore-feet upon a piece of wood eight inches thick, and a foot square, then one with a Mallet, setting a chizel of two inches broad upon the three claws of his fore-foot, at one blow doth smite them clean off; and this is the manner of expeditating of Mastibes.

9 In what places dogs are to be expeditated.

NOw next it is requisite to declare in what places and Forests Mastibes shall be expeditated, and whether Mastibes are to be expeditated in all Forests and Chases, or not; or whether but in certain places; and what places those are wherein Mastibes must by the Law be expeditated. And for that in the Assises of King Henry the second, called the Assises of Woodstock, the words are these, Item Rex præcipit quod expeditatio Mastivorum fiat, ubicunque feræ suæ pacem habent vel habere consueverunt, which is, That the King commandeth that Mastibes shall be expeditated every where, wheresoever his wild Beasts have a firm peace, or have used to have any peace. By this Law it may seem by the words, that mastibes are to be expeditated in Chases as well as in Forests, because that in Chases the wild Beasts have a peace as well as in the Forests: But yet the Law in that point was never so taken, nor understood to extend to expeditate Mastibes in Chases, but only in Forests, and that for three causes; first, for that it appeareth in the beginning of the same Assises of Woodstock that they are Tantum Assisa Foreſtæ, non Chaſeæ, they are the Assises and Laws of Forests only, not of Chases; and therefore the execution of the Law hath never been used but only in Forests, and not in Chases; for I never found nor read of any president that Mastibes were expeditated in Chases, but in Fo-

Assisa foreſt. de Woodstock, artic. 6.

reſts:

reſts: Secondly, For that within a Chaſe there are no Regarders, but in Foreſts; and Maſtibes are not to be expeditated but only where the Regard is to be made, and that is in Foreſts, and not in Chaſes; for the inquiry and view of the expeditating of Maſtibes is to be made when the Regard is made, every third year, which is made only in Foreſts, and not in Chaſes. Thirdly, because the words of Charta de Foreſta are, Inquiſitio vel viſus de expeditatione canum exiſtentium in Foreſta, &c. The inquiry and view of expeditating of dogs within Foreſts, &c. and ſo the Charter hath relation to the expeditating of Dogs but only within Foreſts, and not in Chaſes; for the Laws of Foreſts do not extend to Chaſes; and therefore it is moſt certain, that the Foreſt Law doth not compel Maſtibes to be Lawed or Expeditated in Chaſes, but only in Foreſts: But in Foreſts Maſtibes are to be expeditated; and there is no Foreſt exempted, except thoſe that are freed by the Kings Grant only. There are ſome men that do fondly think and affirm, that Maſtibes are not to be expeditated in all Foreſts, but in certain Foreſts, that is to ſay, in thoſe Foreſts that Maſtibes were uſed to be expeditated in, in the time of King Henry the ſecond, becauſe that the words in Charta de Foreſta are, Nec expeditentur Canes de cætero niſi in locis ubi conſueverunt expeditari tempore primæ Coronationis prædicti Regis Henrici Avi noſtri; Neither ſhall Maſtibes be expeditated from henceforth but only in ſuch places were Maſtibes were uſed to be expeditated at the time of the firſt Coronation of King Henry the ſecond; and hereupon many do ground an opinion, that unleſs there be manifeſt proof made that Maſtibes were expeditated in that place at the time of the firſt Coronation of King Henry the ſecond, they have great wrong to have their Maſtibes expeditated there; for they ſay, that all ſuch places and Foreſts are freed by

Charta de foreſta, artic. 6.

Charta de foreſta, art. 6.

Charta de foreſta, artic. 6.

those words aforesaid of the Charter; whereas the meaning of these words is not to exempt or free any Forest, that doth remain a Forest still, from the expeditating of Mastives, but only to exempt those places that were once Forests, and now by the first and third Articles of this Charter are to be disafforested again; for in the sixth Article of the Assises of King Henry the second, there the words are, Quod expeditatio Mastivorum fiat ubicunque ferae suae pacem habent, vel habere consueverunt; That Mastives shall be expeditated every where, wheresoever the wild Beasts have any peace, or have used to have any peace. By this Law, notwithstanding that by the first and third Articles of the Charter all the new Afforestations that were made by King Henry the second, King Richard the first, or King John, were appointed to be disafforested again: yet forasmuch as in those places so disafforested the wild Beasts have used to have a firm peace, as in Forests, Mastives were there to be expeditated still; and therefore in that Article of the Charter, setting down the order of the expeditating of dogs, this clause of exception was put into that Article of the Charter, viz. Nec expeditentur Canes de cætero nisi in locis ubi consueverunt expeditari tempore primæ Coronationis prædicti Regis Henrici Avi nostri; as if he should have said, But yet for all that Mastives shall not be expeditated in any of those places that were once Forest, or that are yet Forest, and must now by this Charter be disafforested; but Mastives shall be expeditated in all Forests, that were Forests at the time of the first Coronation of King Henry the second; that is to say, in all the ancient Forests, that shall remain Forests still; for by the Charter all new Forests were generally to be disafforested, and no expeditating of Mastives to be used in any one of them; but all old Forests, that were Forests at the time of the first Coronation

Assisa foreſtæ de Woodſt. artic. 6.

nation of King Henry the second, were to remain Forests still, and in them Mastives were, and yet are to be expeditated: So that briefly the intent and meaning of those words, nec expeditentur canes, &c: is, that Mastives shall not be expeditated in any place but where Forests are remaining still, and where Forests shall be remaining; for as the second Article of Charta de Foresta is a clause put into the Charter to exempt all those that were put out of the Forest by the disafforestation, from the bondage of coming before the Justices of the Forest by the common Summons, as they were wont to do; so likewise this clause, Nec expeditentur canes, &c. is a clause put into the Charter, only to exempt and free those places that be disafforested from the bondage of Lawing and Expeditating of their Mastives, as they were wont to do before the making of the Charter, and the disafforestation of the new afforestations aforesaid: And therefore at this day, in all places in England, where Forests are, there is no doubt but that there must be expeditating of Mastives, except that they have some special Charter or Grant from the King to the contrary. Charta de Foresta, artic. 2.

10 The forfeiture by dogs unexpeditated within a Forest.

THe forfeiture that doth grow unto the King onely for the keeping of Mastives within a Forest unexpeditated, is set down and declared to be certain by the sixth Article of Charta de Foresta, in these words, Et ille cujus Canis inventus fuerit tunc non expeditatus, det pro misericordia tres solidos. And he whose Mastive shall be found unexpeditated, or not expeditated, within the Forest, shall pay unto the King for his fine 3 s. But if such a Mastive, that is so kept within any Charta de Foresta, artic. 6.

Forest unexpeditated, do hurt or kill a wild Beast of the Forest, then the owner of such a Mastive is to be punished for that according to the quality of the same offence, over and besides the three shillings for the keeping of such a Mastive unexpeditated.

11 Who shall be chargeable by the same forfeiture, and in what manner.

WHo shall pay the said fine or forfeiture for the keeping of such a Mastive unexpeditated to the King, is likewise set down and declared in these words, Et ille cujus canis inventus fuerit, &c: and he whose Mastive shall be found unexpeditated, that is to say, he that shall be by Inquisition found to be the owner of such a Mastive, that is so kept unexpeditated, det pro misericordia tres solidos, he shall pay unto the King three shillings for the keeping of the same Mastive. But it seemeth plain by those words, Et ille cujus canis inventus fuerit, that before that the said fine of 3 s. can be levied, there must first be an Inquisition taken by the Regarders of the Forest, so that the same may be found by them, and upon their oaths presented and certified of Record before the Verderers, and then upon such matter of Record the Court may award Process to levy the same fine of 3 s. and not before; for the Court cannot cause the same 3 s. to be levied or gathered of any man, before that it be found by Inquisition, and certified into the Court of Record,

Charta de Foresta, art. 6.

1 What dog the same is.
2 Who is the owner thereof.
3 Who doth keep such a dog.
4 Where and in what place he is kept, that it may appear whether he be kept within the Forest, or out of the Forest.

It

It appeareth by theſe words, Et ille, cujus Canis inventus fuerit tunc non expeditatus, det pro miſericordia tres ſolidos, that it muſt be found by the inquiſition and view of the Regarders of the Foreſt, what manner of dog it is that is ſo kept unexpeditated; for, if it be not a maſtive, the owner thereof is not chargeable to pay the ſaid three ſhillings, neither is the ſame dog to be expeditated by the aſſiſes of the Foreſt. And likewiſe it muſt be found, who is the proper owner of the ſame dog, for he only is chargeable to pay the ſaid 3. ſhillings. And, as Maſter Heſket ſaith, the ſame 3 s. ſhall be levied and gathered of the owners of ſuch maſtive, upon the certificate of their inquiry, and view of record. And ſaith alſo, that if in caſe the Regarders of the Foreſt by their view and preſentment, do find and preſent one maſtive kept within the Foreſt, which is not hambled nor expeditated according to the Laws of the Foreſt; and they ſay alſo, quod ignorant cujus Canis ille eſt, this is a void preſentment, becauſe that the owner of ſuch a Maſtive is not herein found and preſented. But yet nevertheleſs, ſuch a dog ſhall be taken away by the Officers of the Foreſt, and carried clean out of the Foreſt: But if ſuch a dog habe done hurt unto the wild beaſts of the Foreſt, then he that hath kept ſuch a dog is anſwerable for the ſame: And if any perſon do claim the ſame dog by action of Treſpaſs, or Replevin, or otherwiſe by matter of record, and the ſame tried, and thereby proved to be his dog that doth ſo claim him, then upon that trial, and the firſt preſentment, the ſame owner ſhall be forced to pay unto the King three ſhillings for the keeping of the ſame dog unexpeditated within the Foreſt.

M. Heſket, f. 27.

Hic incipit le Lecteur de mon Maiſter Heſket de la Foreſt ley.

And if the Regarders do find and preſent one dog, ut ſupra, which is the dog of one John at Stile, that is a good preſentment, and the ſaid John at Stile cannot diſclaim, nor ſay that the ſame is not his dog generally.

And that is, as Master Herket, and Master Treberne affirm, the reason of the letter of the Charter, Quod ille cujus Canis tunc inventus fuerit; so that if it be found by matter of Record for the King, then John at Stile is to pay the amerciament of three shillings; for he cannot counterplead that point, generally, against the presentment and return of the Officers of the Forest that are sworn.

And if a man be indicted for that he did keep one dog of one John at Stiles within the Forest not expeditated, contrary to the Laws of the Forest, if before the Justices of the Forest he do plead that the Dog is not his; that is no plea, without saying to whom the property of the dog is, as to John at Stile, &c. And if the Jury do find that the property of the dog is not to the said John at Stile, nor yet unto John at Downe, that is no sufficient verdict, without finding to what other person the property of the dog was: for in that case it is like unto a man that is indicted by the Coroner, super visum corporis, and he doth plead not guilty, and the Jury do find him not guilty, yet that is no sufficient verdict, without presenting one other person that did the same murder; which presentment shall be in the nature of an Indictment against him: so that if he plead not guilty, that is no plea: nor yet to find him not guilty, is not any sufficient verdict against such a presentment, ut supra.

If the Regarders do find and present such a dog kept at the house, or in the house of John at Downe within the Forest, yet for that John at Downe shall not be amerced by reason of such a presentment: But if the Regarders do find and present that John at Stile did keep such a dog within the Forest, that is a good presentment to charge John at Stile with the amerciament or fine of three shillings: But if the Regarders do find

and

and present that John at Stile did deliver one dog to John at Downe to keep within the Forest, and that he did keep that dog there unexpeditated, in that case the deliverer or bailor of that dog shall be charged upon that presentment to pay the said fine of three shillings, and not the bailee, or he to whom the dog was delivered.

But if the Regarders do find and present that John at Stile did deliver the said dog for a certain time to keep to John at Downe, which John at Downe did keep the same dog within the Forest unexpeditated, there the bailor and the bailee shall both be amerced: But if it be found, that the dog that was so delivered to be kept was a pledge, or a mortgage for money, ut supra, there he to whom the dog was delivered only shall be charged of the amerciament of three shillings, and not the bailor.

And if it be found and presented, that John at Stile as a trespasser, vi & armis did take the dog of one John at Downe, and did keep him within the Forest unexpeditated, John at Downe the owner shall be charged of the amerciament, and not John at Stile the trespasser.

So it is, if it be presented that John at Stile vi & armis did take the dog of one John at Downe from him, and upon that taking John at Downe brought a Replevin, and that John at Stile did keep the same dog within the Forest unexpeditated; in this case, John at Downe, the very owner of the dog, only shall be charged of the amerciament, and not John at Stile that kept the dog.

And if it be presented and found that one John at Stile hath kept two Mastives within the Forest unexpeditated, in this case John at Stile shall not be amerced for every dog three shillings, but only three shillings for

all that offence. But if two men have joyntly, or in common, one dog within the Forest unexpeditated, there every one of them shall be amerced three shillings severally: But otherwise it is, if it be found and presented that the husband and wife have kept one dog within the Forest unexpeditated, the husband only shall be amerced the three shillings, for they both are but one person in Law: and the wife shall not be charged by such a general presentment after her husbands death: But if they had the dog from one whose Executrix the wife was, there she surbiding shall be charged.

And if it be found by the Regarders of the Forest, in their Inquisition, that a Duke, an Earl, a Baron, or any other great person of the Realm, Spiritual or Temporal, do keep such a dog within the Forest unexpeditated, he shall pay but onely the amerciament of three shillings, according to the letter of the Charter of the liberties of the Forest, and not any amerciament according to his dignity and degree, as they do at the Common Law: But if such a person of dignity or honour be presented and indicted for the keeping of Greyhounds, and hunting with them in the Forest, before the Justices of the Forest, there he shall be out of the remedy and priviledge of that letter; and then he shall be amerced for the same by the Justices of the Forest at their discretion, according to his dignity and estate. And Master Hesket noteth, upon this word Det, that the said amerciament of three shillings shall be levied by distresse presently, before the comming of the Justices of the Forest. And indeed it hath always been so used, as it doth appear by Rolls and Presentments of the Regarders in divers Forests: for in this case (saith he) the same is like an amerciament of a Leet.

And this Article, for the view and inquisition of expeditating of dogs, doth differ from any other Article of

of the Regard; for concerning this Article, the Regarders may ſet down the fine certain themſelves; and upon their preſentment certified and returned of Record before the Verderers, the fine may be levied preſently; and he that is preſented and found to have kept a dog within the Foreſt unexpeditated, ſhall pay three ſhillings for the ſame: And yet nevertheleſs, if he will keep his dog ſtill, he muſt have him expeditated, or elſe put him away out of the Foreſt. Et ceſt eſt l'opinion de mon Maiſter Hesket, en ſon Lecteur de la ley del Foreſt: Mes ſil ſoit bone ley en cheſcun point, ou nemy, *Quære.*

12. Whereof it is named Expeditating, or Hambling.

THis verbe Expeditor, to make lame, or to make one halt, or unable to run, is a made Latine word, uſed inſtead of Mutilo, to make one lame: And in the Aſſiſes and Cuſtoms of the Foreſt that were made in the time of Edward the First, there this word Mutilatus is uſed for Expeditatus, as a word of better Latine, and meet to be uſed for that purpoſe. Canutus in his one and thirtieth Canon doth call the lawing of dogs Genuiſciſſio, but that was a kind of cutting or laming of dogs in the hams; and that ſort of lawing of dogs the old Foreſters were wont to call Hamling, or Hoxing, and of ſome Hockſynewing. King Henry the Second was the firſt that began to cut off the claws of the forefeet of Maſtibes: And therefore he called that manner of torment of lawing of dogs, Expeditatio Maſtivorum, the expeditating of Maſtibes, taking that name (Expeditating) of making them lame and unable to run, Ex pede, of the hurt or maim that they have of the foot, by the cutting off of the three claws of the forefoot. M. Serj. Fleetwood ſaith, That this manner of lawing of dogs, is called Expe-

Aſſiſa & conſuetudines foreſtæ, art. 9.

Canutus, Canon 31.

Aſſiſa foreſt. de Woodſtock, artic. 6.

M. Sergeant Fleetwood.

Expeditatio, quasi diceret Ex pede Statio, that is to say, a let or stay to run, by the hurt of the foot.

CHAP. XVII.

1. *Of Nusance of the Forest, and what shall be said to be a Nusance of the forest.*
2. *How many sorts of Nusance of the forest there are.*
3. *Who shall inquire of Nusances of the forest.*
4. *How, and in what manner, the Nusances of the forest are to be remedied.*
5. *How, and in what manner, they that do make Nusances of the forest be punished for the same.*
6. *Whereof the same taketh name of Nusance.*
7. *Of the difference between Nusance at the Common Law, and Nusance by the Forest Law.*

1. Of Nusance of the Forest, and what shall be said to be a Nusance of the Forest.

EVen as at the first ordaining and appointing of Forests, there were certain particular and proper Laws made and instituted for the continuance of Forests, and for the preservation of Vert and Venison, without which a Forest cannot remain and be a Forest: So likewise, whatsoever thing there is, or may be, that tendeth to the hurt or destruction of the Forest in any degree, or to the hurt or destruction of the Vert or the Venison of the same, or to the breach of those Laws so made for the preservation of them, the same is, and may be called a Nusance of the Forest: For this word (Nusance) by a general name doth in effect comprehend in it every offence in the Forest, that is or may be done against the Laws of the Forest.

2. How

2. How many sorts of Nusance of the Forest there are.

Of Nusances of the Forest, there are three sorts of them: The first is called Nocumentum commune, or common Nusance; and this sort of Nusance or annoyance is that, which is a general hurt and annoyance, as well unto all the inhabitants and dwellers within the Forest, as also unto the wild beasts of the same: As for example, if any man that ought to make or repair any bridge or bridges for common passage, over any riber being in any highway leading through the Forest, do suffer the same to decay, so that by reason thereof men cannot have their passage in the common highway, as they were wont to have, but are driven to wander through the Forest out of the common highway, to their own trouble, and the disquiet of the wild beasts of the Forest also, this is a common Nusance; and this is to be presented at the Justice-seat, before the Justice in Eyre of the Forest, Itinere Lancaster, fol. 7.

And in like manner it is of all common highways through the Forest, if they be suffered to decay, so that men cannot have their common passage through the Forest by reason thereof, as they were wont to have, this is to be inquired of, and to be presented before the Lord chief Justice in Eyre of the Forest, Itinere Lancaster, f. 7.

And in like manner it is of such as are forreiners and do dwell without the bounds and limits of the Forest, having no freehold or title of common within the Forest, and yet do oberlay the common within the Forest with their cattel, to the annoyance of the wild beasts, and also to the annoyance of such as ought to have common within the Forest, this is a common Nusance, for that the same doth as well annoy the inhabitants of the Forest, as also the wild beasts of the same.

In

In this number are also all those that do new erect any Water Mill within the Forest upon any river, or do otherwise make any dam, or do stop any water-course, whereby the water doth overflow and drown any meadow or pasture ground, to annoy the wild beasts of the Forest of their feeding, or to drown any common highway of passage through the Forest, this is a common Nusance, and all these are punishable by the Justice in Eyre of the Forest at his Justice-seat. Itinere Lancaster, fol. 7.

The second sort of Nusance is called Nocumentum speciale, or special Nusance, because this sort of Nusance tendeth specially ad Nocumentum ferarum, to the hurt of the wild beasts of the Forest. In this second division is comprehended all manner of hunters and trespassers in the Forest that do any manner of way trespasse, or offend against the benison or the wild beasts of the Forest, as with hunting in the Forest, either in the day, or in the night, with bows, guns, or any other manner of engines, to take or destroy the wild beasts, or with Grey-hounds, or any other dogs, with an intent to take or destroy the wild beasts of the Forest; this is an especial Nusance, for that the very offence it self tendeth directly to the hurt and destruction of the Venison of the Forest, which is the most especial thing in a Forest, and the only thing for the which a Forest is made a Forest: And for this cause, the same may very well be called Nocumentum speciale.

The third sort of Nusance or annoyance may well be called Nocumentum generale, because it stretcheth to the generall hurt and annoyance of the whole Forest, and therefore by an accidental means to the wild beasts of the Forest. Within this division is comprehended all manner of trespasses that do tend any way to the waste, hurt, or destruction of the Vert of the Forest: for the

the destroying of the Wert of the Forest doth cause the exile and banishment of the wild beasts from the same: and therefore, by a secondary means, it is a hurt to the wild beasts of the Forest; and so that which tendeth to the hurt and annoyance of the Wert and the Venison, tendeth to the general hurt and destruction of the Forest. And in this division are also comprehended all Surchargers of the commons, and Agistors of their own pastures and lands, which by eating up their pastures and commons so bare that the Deer can have no seed there left for them, they do likewise cause the exile and banishment of the wild beasts from the Forest. In this division are also comprehended all Assarts and Purprestures, and all manner of trespasses that do tend to the hurt or destruction of any herbage of pasture within the Forest, or else to any unlawfull manner of disquieting of the wilde beasts of the Forest by any such like secondary means.

3. Who shall inquire of Nusances of the Forest.

AND of all those Nusances, generally, the Regarders of the Forest, in their Regard, are to have the view, and also to inquire the certainty of them in every point, and thereupon to make their presentment and certificat unto the Verderers, at the next Swanimote to be holden for the same Forest, to the end that all those offences and offenders may there receive a lawful trial, according to the Statute or Ordinance of the Forest, called Ordinatio Forestæ, made and set forth in Anno 34 Edwardi primi. And that then, after that all such offences have received a trial, as aforesaid, they are to be sealed up, and so to be kept by the Verderers of the same Forest, until the coming of the Lord chief Justice in Eyre of the Forest, to the end that when they do come before him, such offences shall not there be traversed.

4. How,

4. How, and in what manner the Nusances of the Forest are to be remedied.

AND when the said Lord chief Justice in Eyre of the Forest shall come to sit in his judicial-seat for the same Forest, then all those Nusances aforesaid shall be remedied in this order. First, if it be in common Nusance, as in not repairing of bridges, or common highways, or such like, the offenders being convicted and bound to appear before the Lord chief Justice in Eyre, he shall cause the defaulter to be bound with good and sufficient sureties, to see the same well and sufficiently repaired, as it ought to be, by a certain day, or otherwise to forfeit his bond, and also to fine him for his default in not doing of the same: but if such an offender being convicted of his default, as in that he ought to repair the same and hath not done it: then if such an offender or defaulter be not bound to appear at the Justice-seat, nor will not appear there, then after Judgment there given, that he ought to repair and amend it, and also do fulfill the same Judgment, or else his lands and tenements shall be seised into the Kings hands, until that he have amended and repaired the same, as he ought by the Law to doe.

And if any forreiner be convicted of commoning with any beasts within the Forest, (besides that his beasts being taken for the third offence shall be forfeited) he himself shall also make his fine with the King for that offence. And all such as have new erected any water-Mill, or made any dam to drown any meadow, or pasture ground within the Forest, or to hinder or stop any common passage or highway, all such offenders shall be adjudged to make their fine with the King for the same,

ſame, at the diſcretion of the Lord chief Juſtice in Eyre: And alſo to be bound in a great ſum of money with ſufficient Sureties, to amend all ſuch defaults, before a certain day unto them then and there to be limited and appointed.

And all ſuch as are or ſhall be convicted of hunting or treſpaſſing within the Foreſt, to the hurt of Veniſon or wild beaſts, which offence is called Nocumentum ſpeciale, they are to be impriſoned, ranſomed, and bound to the good abearing of the Foreſt: And all ſuch as are convicted of deſtroying of Vert, or of felling or cutting down of Vert, Woods, or Covert, within the Regard of the Foreſt, they are firſt to be impriſoned, and then to make their fine with the King for that offence, and to be bound to the good abearing of the Foreſt.

And for thoſe that do agiſt within the Foreſt: And alſo for thoſe that are ſurchargers of the Foreſt: ſee before in the Chapter of Agiſtment, and in the Chapter of Common, Commoners, and Surchargers. And for Aſſarts, ſee in the Chapter of Aſſarts before: and likewiſe in the Chapter of Purpreſtures and Waſtes. And theſe are the means that the Laws of the Foreſt have appointed to remedy theſe Nuſances.

5. How, and in what manner, they that do make Nuſances of the Foreſt ſhall be puniſhed for the ſame.

HOw, and in what manner, all thoſe that do make or cauſe any of the foreſaid Nuſances of the Foreſt to be made or done, ſhall be puniſhed, it hath for the moſt been declared here before, in the fourth diviſion of this Chapter. And this note further, for a general rule, that in every treſpaſſe and offence of the Foreſt in Vert and

veniſon,

benison, the punishment for the offender thereof is, to be imprisoned, ransomed, and bound to the good abearing of the Forest: But this punishment cannot be executed in every point, but only by a Judicial sentence pronounced by the Lord chief Justice in Eyre of the Forest at his Justice-seat; in which case the party is always first convicted of the offence by a lawful trial, according to the Laws of the Forest.

Charta de fo-resta, artic. 15.

And all such as are convicted of any manner of common Nusance of the Forest, they are to be imprisoned, fined, and bound to amend the same by a certain day; but I find no president in all the Assises of Pickring and Lancaster, that ever any such was bound to the good abearing of the Forest: but only bound to amend the same common nusance, whereof they are convicted: for wastes and assarts of the Forest, they are comprehended in the trespasses of vert: and therefore they that are offenders therein, they are to be imprisoned, ransomed, and bound to the good abearing of the Forest.

And all such as are convicted of any manner of offence in Purpresture within the Forest, they are to be imprisoned, fined, and bound to pull down and destroy the same Purpresture by a certain day, or else to yield and pay unto the King yearly a rent, for the same to stand. But I do not find, that for making of Purpresture any man hath been bound to the good abearing of the Forest.

For Nusances of the Forest, see more *hereafter in the Abridgement of the Assises and Iters of Pickring and Lancaster, in the Title of Trespasses of the Forest there.

* It seems that the Author purposed to publish an Abridgment of the said Assises of Pickring, &c. in a third part of this work, as appears hereafter, cap. 20. Divis. 13. but if otherwise, Quære whether this referment doth direct.

6. Whereof

6. Whereof it taketh the name of Nusance.

And it is to be noted, that this word Nusance is derived of the French word Nuisance, which doth signifie to annoy, or to hurt, which we call in Latine Nocumentum, comprehending within it, by a general name, all manner of trespasses and offences in the Forest that do any way tend to the hurt, harm, or damage of the Forest. And it is here used in this place in the same sence that this word Trespass is, and taken for trespass, because the word it self hath a larger scope in some signification, than this word Trespasse hath.

7. Of the difference between Nusance at the common Law, and Nusance by the Forest Law.

The difference betwéen Nusance by the Common Law, and Nusance by the Forest Law, is this: that Nusance by the Common Law is that which tendeth to the general hurt and annoyance of the Kings liege people, or else, to the hurt and annoyance of some one particular person: And Nusance by the Forest Law is that which tendeth to the hurt or annoyance of the Vert or Venison of the Forest in what sort soeber: so that, that thing which may be accounted Nusance by the Common Law is not to be accounted Nusance by the Forest Law, except that the same in some sort do tend to ꝑ hurt of the Forest, but if that any thing that is nusance at the Common Law do tend to the hurt and annoyance of the Forest, being not tolerable by the Assises of the Forest, then the same shall also be called a nusance of the Forest. Note the difference.

CHAP. XVIII.

1. *Of Hawking and Hunting within the forest.*
2. *Who must Hawk and Hunt within the forest, and who may not.*
3. *Of licenses to Hunt within the forest, and how men may use their licenses in Hunting there.*
4. *Who may grant a license or warrant to hunt within the forest, and who may not.*
5. *Of the difference between a license of pleasure, and a license of profit:*
6. *Of him that hath a right or interest to have yearly a fee Deer within a forest, and what remedy or means he hath by the Law to come by the same.*
7. *If he that hath a license or authority to Hunt within the forest do abuse the same in hunting, then he shall be a trespasser in all* ab initio.
8. *Of a license in Law, and a license in fait, and their difference.*
9. *Of such as are trespassers and malefactors in hunting in forests, and how they are to be punished and used for the same.*
10. *Of the signification of these two words, Hawking and Hunting.*

1. Of Hawking and Hunting within the Forest.

HAwking and Hunting in Forests are pastimes of delights and pleasure, ordained and appointed chiefly for the recreation of Kings and Princes; and therefore they are not to be used in Forests by every common person, but only by such as are Earls, Barons, and Noble men of the Realm, being thereunto licensed or authorized by the King, or by his Justice in Eyre,

Eyre, or other officers of the Forest, or by such as have some good and lawful authority thereunto. And even as the Forest is a priviledged place for the peace and safety of the wild beasts, so likewise it is also a Sanctuary and priviledged place for the peace and safety of all manner of wild fowls, but most especially for those that are birds and fowls of warren; and therefore every forest doth contain in it a free warren.

21. Who may Hawk and Hunt within the Forest, and who may not.

THe King himself, and all those that have any sufficient warrant or authority from him to Hawk or Hunt within the Forest, they only may Hawk and Hunt there, and none other; and all such as have any lawful claim allowed in Eyre by reason of any grant from the King, to Hawk or Hunt within the Forest, they may use the same according to their grant, so they do follow their authority in the same manner that it is granted unto them. It appeareth in the Assises and Customs of the Forest made, in An. 6. of E. 1. that the Abbot of Peterborough had a Charter from the King, to have hares and fores within certain Forests, and it doth appear likewise in the Assises of the forests of Pickring and Lancaster, that divers persons have had grants and Charters from the King, to hunt Hares and fores; and also to Hawk and to take fowls and birds of warren within a certain place of the forest; by reason of which Grants and Charters, they did make their claims in Eyre before the Justices of the forest. Whereby it is to be noted, that without such Grants or Charters, they might not hawk nor hunt within the forest: Wherefore, if any Knight, Esquire, or Gentleman, dwelling within the Regard of the forest,

Assisa & consuetudines foreſtæ, art. 20.

Itin. Pickring, fol. 59.

Assisa forestæ de Pickring, f. 39.

rest, and being Lord and owner of a Manor there, yet he may not hawk nor hunt within his own Lordship or Manor being within the Regard of the forest, except that he have a lawful claim for the same, allowed him in Eyre, by reason of some Grant or Charter from the King; for this is plain that by the Assises and Laws of the forest, no manner of person may hawk or hunt within any part of the forest, that is within the Regard of the forest, except that he have a sufficient warrant so to do: and therefore all Knights, Esquires, Gentlemen, and freeholders, that do dwell in the forest, they must forbear to hawk or hunt within their own grounds being within the Regard of the forest, because it is a trespasse and breach of the Kings free and firm peace of the forest, for any man whatsoever to hawk or hunt within the same, without good warrant from the King.

Charta de Foresta, cap. 11.

It appeareth by the 11. Article of the Charter of the forest, that it is there granted by the same Charter, that if an Archbishop, Bishop, Earl, or Baron of the Realm, coming to the King by his commandment, and passing through any forest of the Kings, it shall be lawful for him to kill one or two his Deer there, by the view of the forester, if he be present, or else to cause one to blow a horn for him. By this it seemeth that before this grant made by the Charter, neither Archbishop, Bishop, Earl, nor Baron, might hunt in any of the Kings forests without good warrant so to do: neither may they yet at this day, but when they are sent for to the Court by the Kings commandment, and in their returning home again; for in that case, that article of the Charter of the forest is a good license and warrant for such persons, and in such sort, to hunt in the Kings forest: where note, that by the form of this license or grant, there are four things strictly to be observed.

1. That

1. That he be ſent for by the King.
2. That he be an Archbiſhop, Biſhop, Earl, or Baron
3. That it be done by the view of the Foreſter, or elſe,
4. That if the Foreſter be abſent, he cauſe a horn to be blown for him.

3. Of licenſes to *Hunt* within the Foreſt, and how men may uſe their licenſes, in Hunting there.

IT ſhall be very neceſſary here in this place to ſpeak ſomething of licenſes and warrants to hunt and hawk in Foreſts and in Chaſes, and how and in what manner men may uſe their licenſes, authorities and warrants in hunting in Foreſts. And therefore it is to be underſtood, that he that hath any manner of licenſe, warrant, or authority to hawk or hunt in any Foreſt, Chaſe, or Warren of the Kings, he muſt have great regard that he do follow ſtrictly the form of his authority that is given him, be it by licenſe or warrant, or otherwiſe; for if he do not, then he is to be puniſhed for the ſame, as a treſpaſſer Ab initio: For, if a man have a licenſe to hunt and kill one Buck in any Foreſt, Park, or Chaſe, he may not by that licenſe carry away the ſame Buck ſo killed, neither may he kill any other Deer but only a Buck, by that warrant or licenſe.

It was holden for Law, in 18. E. 4. in the Caſe of one Aſhton, that where a man had a licenſe to hunt and to kill three Bucks in his Park, and thoſe three Bucks to diſpoſe for the honour of him that was owner of the ſame Park that gave him that licenſe, that in that caſe, the ſervant of him to whom that licenſe was given, might not hunt, nor kill thoſe three Bucks by that licenſe: neither might he to whom that licenſe was granted, M. 18. E. 4. fol. 14. pla. 12.

ted, hunt with any more company than himself, and not with his servants: neither might he grant over that license to any other, because that the same license was but a license of pleasure, and not a license of profit, for the grantee of that license had not by that grant any property in the thing granted.

Hilar. 13. H. 7. fol. 13. pla. 2. And in an. 13. of Henry the 7. in the Case of the Dutchesse of Norfolk, it was holden for Law, that where a license was granted by the Dutchesse of Norfolk to the Earl of Suffolk, to hunt in the Park of the said Dutchesse of Norfolk at Lopham, at his pleasure, that by that license the Earl might not hunt with any of his servants with him, nor with any more company than himself, because that such a license was but a license of pleasure; and therefore might not extend to any other, but only to himself.

Ibidem. But it was there taken for good law, by the opinion of the whole Court, that when the said Earl pleaded a license given unto him by the foresaid Dutches, to hunt, kill and carry away the Deer that he killed, that in that Case, the Earl might now justifie to hunt with his servants, and other his friends with him, because that now this was a license of profit, for that the grantee by his license hath property in the thing granted. Note the difference.

Hill. 13. H. 7. fol. 12. pla. 1. It appeareth in Anno 13. Henrici 7. in the Case of the Earl of Suffolk, that in an Action of Trespasse brought against Ralph Barney and Richard Whitley by the said Earl of Suffolk, for hunting in the Park of the said Earl, that Whitley in bar of that Trespass for Hunting in his Park, pleaded that the said Earl at a certain day and place did deliver a sufficient warrant sealed with his seal unto one Robert Southwell, directed to one T. the Keeper of the same Park where the Trespass was supposed to be done, commanding him to deliver unto

unto the ſaid Robert Southwell one Buck of that ſeaſon; by vertue whereof the ſaid Robert Southwell, at the time of the Treſpaſs ſuppoſed, and the ſaid Richard Whitley, as his ſervant, with him entred into the ſaid Park, and there the ſaid Robert Southwell delibered the ſaid Warrant unto the ſaid Keeper of the Park; and the ſaid Robert Southwell and Richard Whitley required the ſaid Keeper to hunt, which did ſo, and killed one Buck, and the ſaid Whitley carried the ſame away with him, as lawful it was for him to do: And this was holden there for a good and lawful juſtification; whereby it appeareth, that he that hath a Licenſe of Profit he may Juſtifie for himſelf to hunt, and alſo for others with him.

And likewiſe in Anno 12 H.7. it is holden for Law, that if a man have a Licenſe granted him to enter into a Chaſe or a Park, and there to hunt at his pleaſure; in that caſe if he doth kill a Deer in his hunting, he may not carry the Deer away with him, neither may he grant over that Licenſe to any other man to hunt there for him, neither may any other man hunt there for him, or with him, by that Licenſe, becauſe this Licenſe is but a Licenſe of pleaſure, and not of profit; for when he hath killed a Deer there by hunting, he hath no property in the ſame by that Licenſe, as it appeareth there in the caſe of the Dutcheſs of Suffolk. Trinitat's 12. H.7. fo. 25. pl. 5.

It ſeemeth by the Caſe of the Lord Beamount, in 22 H.6. that if a man have a licenſe for him and his ſervants to hunt and chaſe in a mans Chaſe, Park, or Warren at his pleaſure, that by theſe words, for him and his ſervants, ſhall be underſtood a Licenſe of profit, and that by the words, for him and his ſervants, the grantee may hunt, kill, and carry away: for theſe words, for him and his ſervants, do imply, that the grantee hath property in the thing hunted, becauſe that Paſchæ 22. H. 6. fo. 25. pl. 23.

by such a License the grantee may justifie for his servant to hunt, which is more then a License of pleasure.

But here it is to be noted, that he that hath any maner of License to hunt in any Forest, Chase, Park, or Warren, must take heed that he do not abuse his License, or exceed his Authority in any point; for if he do, then he shall be accounted a trespasser Ab initio, and shall be punished for that fact as if he had no License at all: As for example, If he that hath a License to hunt and kill one Buck being in season, and he doth voluntarily hunt and kill a Hind out of season, in this case he shall be accounted a trespasser; for he hath abused his License and Authority.

12.H.7.f.25.p.5 And so likewise in the said Case of 12 H.7. If a man have a License for himself only to hunt in a Chase at his pleasure, if he do command his men to hunt there with him, & by that commandment they do hunt there, now he himself is a trespasser by that commandment, and also his men, for that hunting; for he hath abused his Authority. And whatsoever hath been here declared of Licenses for hunting in Chases, Parks, or Warrens, the same is also to be understood of Licenses for hunting and hawking in Forests.

4. Who may grant a License or Warrant to hunt within the Forest, and who may not.

But now concerning the granting of Licenses, who may grant License or Warrant to hunt or hawk within Forests, and who may not, is here necessary to be examined, and most necessary to be known. And therefore it is first and principally to be noted, that the King himself only, being the chief Head and Governour of this Common-wealth (unto whom the Rule and Government of all Forests, and such like places of Princely

ly pleaſures and delights do belong and appertain) may grant and gibe License to hawk and hunt in his Foreſts: And in like manner they that habe ſome ſpecial Authority derived from him for that purpoſe under the Great Seal, may alſo gibe License in ſome ſort, and in ſome places, to hawk and hunt in the Kings Foreſts: The Lord Chief Juſtice in Eire of the Foreſt may License or gibe Warrant to a Gentleman to hawk and hunt within the Foreſt in his own Lordſhip or Mannor, or in his own Free-hold; and this hath been held for a good License and Warrant.

If in caſe that a Subject be Lord and Owner of a Foreſt, he may gibe a License to hawk and hunt in his own Foreſt: But in the Kings Foreſts no man may gibe or grant any License or Warrant to any man to hawk and hunt in them, but the King himſelf only, or his Juſtice in Eire of the Foreſt, being within the Juriſdiction of the ſame Juſtice, or they that by Charter or grant from the King habe ſome eſpecial Authority for ſome ſpecial place.

A Maſter, Keeper, or Foreſter of any of the Kings Foreſts cannot gibe any License or Warrant to any Gentleman, or to any other perſon, to hawk or hunt within the Kings Foreſt, whereof he is a Keeper; for if he do, both the Foreſter and Keeper himſelf, and all thoſe that do ſo hawk or hunt there by his License or Warrant, are all Treſpaſſers, and puniſhable for the ſame by the Laws of the Foreſt.

It appeareth in Anno 2 E. 4. That a man brought an Action of Treſpaſs againſt one for hunting in his Park, and the Defendant pleaded, that the Plaintiff made one John at Style the Keeper of his Park, wherein the Treſpaſs was ſuppoſed to be done, and that at the ſame day and time that the Treſpaſs was ſuppoſed, the ſame Keeper did License and pray this Defendant to Paſchæ An. 2. E. 4. f. 4. pl. 9.

to kill two Deer for him, by vertue whereof he did kill two Deer; Judgment si actio: And this was clearly holden no bar, because that the Keeper had no such Authority himself; for his Authority was only to keep and preserve the Deer, and not to kill them; for it was there holden for Law, that the Keeper himself might not justifie the killing of any Deer without a Warrant from his Master; Ergo, he could not License any other man to kill a Deer, or two Deer. And in like manner it is of all Forresters, and Keepers of the Kings Forest; their Authority is only to preserve and keep the Deer for the King, and for his use, and not to kill or hurt any Deer, except they have a sufficient Warrant from the King, their Lord and Master, so to do, or from his Justice in Eire; and then for the serving of the same, they may hunt and kill Deer according to the tenor of their Warrant: And therefore seeing that the Law is so, That Forresters nor Keepers may not hunt or kill any Deer themselves, without good Warrant; then by the same reason, they may not give any manner of License or Warrant to any other men, to hunt or kill any Deer in their Liberty or Bailywick: And in like sort no Forester nor Keeper may in any sort hawk, to take any Pheasants or Partridges, without his Walk or Bailywick in the Forest; for he is an Officer, that hath Authority by his Office to maintain and preserve them, but not to kill and destroy them; for they are Fowls of Warren, and are by the Laws to be preserved for the Kings delight and pleasure; and every Forester hath charge of them, because that every Forest doth contain in it a Chase, a Park, and Warren; and so a Forest containing in it a Warren, he that hath charge of any part or division in a Forest, as a Forester, hath also charge of those Beasts and Fowls that are Beasts and Fowls of Warren; because that, as the same is a Forest,

reſt, ſo it is a Warren; and as he that is the Officer for the one, is alſo the Officer for the other; and therefore no Foreſter nor Keeper may either hawk, or otherwiſe deſtroy any Fowls of Warren himſelf, nor yet give any Licenſe or Warrant to any other to hawk, or take any Fowls of Warren within their Walks or Liberties. And if a Foreſter or Keeper, that hath his Office by Patent from the King, or from any other, do miſ-uſe his Authority, or abuſe his Authority, that is a cauſe of forfeiture of his Office, as hereafter in another place ſhall be ſhewed more at large. * See in the Chapter of Foreſters; and ſee alſo in the Chapter of Abridgments of the Aſſiſes of Pickring and Lancaſter, in the title of Abuſer, and in the Title of Foreſter, and in the title of Forfeiture.

* See before, ca. 17. Deviſ. 5. in the margent.

5 Of the difference between a Licenſe of pleaſure, and a Licenſe of profit.

And in the Licenſes and Warrants for Hunting or Hawking within any Foreſt, Chaſe, Park, or Warren, it is neceſſary to conſider, firſt, whether that the ſame be a Licenſe or Warrant of pleaſure, or profit. The difference between them is this, when any man hath a Licenſe or Warrant to kill or carry away the thing with him that is hunted, or that is taken by hawking or hunting, ſo that he hath gained any property in the thing ſo taken by his hawking or hunting, then that is a Warrant or Licenſe of profit: But when any man hath a Licenſe or Warrant to hawk or hunt, and yet hath not gained any property in the thing ſo taken by hawking or hunting, becauſe he is not to have the ſame, then this is but a Licenſe of pleaſure; and he that hath a Licenſe of pleaſure only may not hawk nor hunt with any more but with himſelf: But he that hath

hath a License or Warrant of profit, may hawk or hunt with his friends and servants with him. Note the difference.

And therefore in every License and Warrant for hunting and hawking, these five things are specially to be considered.

1. By whom the License or Warrant is made; and whether he that did make the same may make such a License or Warrant, or not.
2. For what thing the same is; and what the substance thereof doth purport.
3. For what place it doth serve.
4. To whom it is granted, and for what time.
5. Whether that the same be a thing of pleasure or of profit.

6 Of him that hath a right or interest to have yearly a fee Deer within a Forest, and of his remedy by the Law for the same.

A Man may have a right or interest to have yearly certain fee Deer within a Forest by prescription, belonging to his Office; as unto the Office of a Lieutenant of the Forest, or unto the Office of Verderor of the Forest, and such like. And whereas the same hath always been used, the Forester, who is to serve the same, is to take notice of them as good Warrants, and to serve them accordingly: And he that hath any such Office, and by reason of his Office is to have any such fee Deer, he ought to give notice unto the Keeper or Forester where the same is to be served, in meet and convenient time, when and where the same shall be delivered, and to will him to execute this his Warrant accordingly. And if the Forester or Keeper do refuse to serve such a Warrant, after such warning so given him, then the

the same Officer, who is to have such a fit Deer, may enter into the walk of such a Forester or Keeper, so refusing to serve the same, with certain of his servants, and there hunt, kill, and take such a Deer as he is of right to have, and that justifie, both for himself and for his servants; for this is a Warrant or License of profit, and therefore he may hunt with his servants: for this is holden as a Maxime in the learning of the Law, That where any man hath an interest or right to any thing by the gift or grant of any other man, or otherwise, and the party that hath such an interest or right, cannot come to have the principal thing, without the doing of some other act or thing, which is the necessary means to come by that principal thing, then he that hath such an interest or right to have the principal thing, may do the other act or thing, which is the necessary means whereby to come to have the principal thing: As for example; It is holden for Law in An 2. of Richard the second, That if a man do grant unto me all his Trees growing in his Wood, whereby I have an interest in the Trees: in this case I may enter into his wood, and there cut down the Trees, and with Carts carry them away thorow his Ground, and that justifie, because that I have interest in the principal thing, I may justifie the necessary circumstance and means to have and come by the same. And in like manner, If a man do sell me all his fish in his Pond, so that thereby I have a right or interest in the same, then may I come thorow his ground to come to the Pond, and there to fish with Nets and such Engines, and so take the Fish, and carry them away; and this I may lawfully justifie, both for my self and my servants; because that I have an interest in the principal, I may justifie the necessary circumstance and means to come by the same. Perkins, fol. 23. Fitz. tit. Bar. 237. M. 2. R. 2.

And in 13. H. 7. in an Action of Trespass, brought against M. 13. H. 7. f. 10. placito 9.

against one for hunting in a Park, the defendant pleadeth that the plaintiff, being the owner of the Park, gave one Buck unto one B. And this defendant, as servant unto the said B. came with him unto the said Park by his commandment to help him to kill the said Buck, by force whereof he entered into the said Park, and there did kill one Buck, as lawful it was for him to do; and there the clear opinion of all the Justices was, that that was a good Justification; which case doth prove, that where a man hath an interest or right, as an Officer, or otherwise, to have a Deer, male, or female, then he may justifie the killing and taking of the same, both for himself and his servants, being the necessary circumstance and means to come to have the same.

H. 13. H. 7. fol. 13. pl. 2. And in 13. H. 7. an Action of Trespass was brought against one Wiseman and others, for hunting in a Park; and the defendant pleaded that the plaintiff, being owner of the Park, gave license unto the Earl of Suffolk, to hunt and kill certain Deer in the same Park, and the same Deer so killed to carry away with him at his pleasure, and saith, that the said Earl by vertue of that license, at a certain day, &c. went to the same Park, and these defendants with him by his commandment, and there in the said Park they did hunt, kill, and carry away certain Deer, as lawful it was for them to do. And this was there held, by the opinion of the whole Court, for a good Justification, both for the Earl, and also for his servants: Which case doth also prove, that where a man hath a right or interest to have a Deer, in a Park or Forest, he may justifie the killing of the same Deer, both for himself and his servants with him, and especially if the Forester or Keeper, who ought to kill and deliver the same Deer, do first refuse to kill and deliver it: so that when a man hath an interest or right to have a thing, he may always justifie those necessary

necessary acts and circumstances that are the means to come by the same; for otherwise, if the Forester or Keeper do refuse, and will not kill, nor deliver such an Officer his fee Deer, then if he might not justifie the killing and taking of the same himself, he were without any remedy at all by the Law, to come by the same; but the Law is not so unreasonable to leave any man without his remedy, to come by that thing which he hath a right unto; And therefore the Law hath provided, that he that hath such an interest or right to have such a fee Deer, if the Forester or Keeper will not kill it for him, but doth refuse the killing and delivering of it, then the same Officers, or he that hath such a right or interest to have such a fee Deer, may justifie the killing and taking of the same, as well for his Servants as for himself, because it is the means to have and come by the thing which he hath right to have: and if it do fall out, that the Forester or Keeper do afterwards complain of such Hunting and taking of the same, as aforesaid, before the Justice in Eyre, or other Officer of the Forest, then he may there by pleading, or otherwise, very well justifie the same Hunting and taking of such a fee Deer; for such a Hunting and taking of a Deer by him that hath a lawfull right thereunto, for his fee Deer, is not any offence nor breach of Laws, Assises, or Ordinances of the Forest; for the words of the Assises and Ordinances of the Forest are, Si quis ceperit feram sine warranto in Forestâ, Corpus suum arrestetur, ubicunque inveniatur infra metas Forestæ: So that although the Law be, that he that doth take a deer within the Forest without any warrant at all, shall be arrested and punished; yet he that doth take a deer within the Forest by good warrant shall not be punished for the same; for the interest, or right of such an Officer of the Forest, that hath always used to have such a fee deer,

Assisa & consuetudines Foreſtæ, Art. 10.

deer is a good and lawful warrant to the Forester, to kill and deliver the same himself if he will, but if he will not, then Cæteri volunt, others may lawfully do it.

7. Who so abuseth his license or authority to Hunt within a Forest, shall be a Trespasser *ab initio.*

BUt yet nevertheless, if he that hath any license or any such authority to Hunt within the Forest do mis-use the same, then both he, and all they that do Hunt with him, shall be accompted trespassers, ab initio, that is to say, trespassers in all that they do from the beginning, as it is holden in 11. H. 4. in an action of Trespasse, Quare vi & Armis domum suam fregit, &c. the defendant pleadeth, not guilty, to the force and Armes, and to the Rest, that he was seised of the same as in fee, and did let the same unto the plaintiff for term of years, and so justifie the coming into the house, when the doors were open, to see if the same were well repaired or not, and also if there were any waste done in it, and that was held for a good plea in Bar; whereupon the plaintiff replying, saith, that over and besides his coming into the same house to see if there were any need of Reparations to be done, or that there was any waste in the same, that then and there he did also certain Trespasses unto the plaintiff, without his agree: For which cause he was adjudged a Trespasser in all ab initio, and yet his coming into the house and ground, at the first, was lawful and also justifiable; but because he did mis-use his authority, therefore he was adjudged a Trespasser in all, ab initio. And in like manner, if he that hath a lawfull authority to Hunt in the Forest, and in his hunting there doth mis-use his authority, then he shall be accompted

11. H. 4. 74. pla. 16.

compted for a Treſpaſſer in all ab initio, and ſhall be puniſhed for the ſame as Treſpaſſer of the Foreſt.

8. Of a licenſe in Law, and a licenſe in Fait, and their difference.

OF licenſes, ſome are called licenſes in Law, and ſome are called licenſes in Fait, whoſe difference is in this ſort; that is to ſay, that is properly called a licenſe in Law, where any man hath a licenſe by word of mouth only without any writing, or by preſcription, as belonging to ſome office of the Foreſt: And that is called a licenſe in Fait, that is in writing under hand and ſeal to be ſhewed. And it ſeemeth that between common perſons, a licenſe in Law, that is to ſay, a licenſe by word only, without any writing, is good, and of as great validity as a licenſe in writing, as it doth appear by the foreſaid caſe in 12. H. the 7. and in 18. E. 4. and in 13. H. 7. But whether a licenſe made by the King to any Subject, for to Hunt in any of his Foreſts, by word of mouth only without any writing, be good and pleadable in Law, or not, may be ſome queſtion, becauſe that the King doth not take any thing by the gift or grant of any man, but by matter of Record; neither doth he grant any thing to any other man, but by matter of record likewiſe: And yet it ſeemeth by the opinion of Shelley and Bryan, in Anno 4. H. 7. that the King may give many things without any writing, and that ſhall be good for Chattels: And in 39. H. 6. in an action of Treſpaſſe, the defendant did there juſtifie the Treſpaſſe by pleading of a commandment of the King, which commandment was by word of mouth only, without any writing; and that was held for a good Juſtification: and therefore it ſeemeth by this, that if a man have a licenſe by word of mouth from the King,

12. H. 7. fol. 27. p. 5. 18 E. 4. fol. 14 p. 12. 13. H. 7. f. 14 p. 2.

Paſchæ 4. H. 7. fo. 6. p. 2. in fine Caſus.

M. An. 39. H. 6. f. 17. p. 21.

to Hunt in one of his Forests, that if he do Hunt there by that license, that he may very well Justifie the same Hunting, although that the license were but a license by word only without any writing; for in this Case, the Hunting is but a Trespasse, if he had no license at all to Hunt; and if a man may plead the Kings commandment by Word only in bar of a Trespasse, by the same reason he may plead the Kings license by word only in bar of a Trespasse. But in the case of a common person, I do hold it no question that if the owner of a Forest or Chase do license a man to Hunt in the same, by word of mouth only, without any writing, that such a license is a good license in Law.

M. 37. H. 6. f. 10. pla. 20.

Hillar. 42. E. 7. fol. 2. pla. 8.

It appeareth in 42. Edw. 3. that one, being Lord and owner of a free Chase, brought an action of trespasse against one, for Hunting and killing of his wild beasts in the same: whereunto the defendant pleaded a license of the Lord and owner of the Chase, by word only, without any writing, which was there challenged by Fencot, and yet the plea in bar allowed for good by the Court: which proveth that a license made by a common person, by word only without any writing, to Hunt in a Chase, is good: and see the like case, in Termino Paschæ, An. 34. H. 6. fol. 43. pla. 3.

9. How trespassers and malefactors by Hunting in Forests shall be punished for the same.

HItherto it hath been declared, how and in what manner men may Hunt that have any authority thereunto, and of such as have any lawful colour or shadow to justifie their Hunting in the Forest. Now it shall not be amisse, here in this place, to speak something of such as have no Colour or Shadow at all, to justifie their Hunting by; and yet nevertheless do

Hunt

Hunt in the Forest, and kill and destroy his Majesties wild beasts there, or at the leastwise in their Hunting, if they do not kill any beast of the Forest, yet they do vehemently disquiet the wild beasts there, to the breach of their firm peace, which all the Kings and Princes of this Realm have always granted, maintained, and allowed, and that the Laws of the Forest do yet allow them: and these are generally called Trespassers or Malefactors in Hunting in the Kings Forests. And if any Forester or Keeper shall find or take any such person or persons with the manner, then he shall arrest their bodies, and carry them to prison, from whence they shall not be delibered, without a special warrant from the King, or from his Justice in Eyre of the Forest: the words of the Assises of the Forest are these, Si quis ceperit feram sine warranto in Forestis, corpus suum arrestetur ubicunque inveniatur infra metas Forestæ, & quando captus fuerit, non deliberetur sine speciali præcepto domini Regis vel capitalis Justiciarii Forestarum. If any man shall take a wild beast in the Forest without warrant, his body shall be arrested, wheresoever he may be found within the bounds of the Forest; and when he is so taken and arrested, he shall not be delibered out of prison, without a warrant from the King, or from the chief Justice in Eyre of the Kings Forests. And notwithstanding that the words there are, Si quis ceperit feram, if any man shall take a wild beast in the Forest, yet if any be taken Hunting in the Forest, although that he have not taken nor killed any wild beast in the Forest, yet he is by the Law to be punished, as if he had killed and taken a wild beast of the Forest, Quia per assisas Forestæ, voluntas reputabitur pro facto. It was adjudged in the Assises of the Forest of Pickring, in the time of E. 3. that he that with a bow and arrows doth enter into the Forest, with an intent to offend

See the Ordinance of the Forest made and established in An. 6. E. 1. art. 10.

there, although that he do no act, yet he is to be puniſhed for the ſame, as if he had done an act, Quia voluntas reputabitur pro facto. Itinere Pickring, fol. 3. And likewiſe where an Abbot ſent a Bow and Arrows to another man, to the intent to kill the Kings Deer, he was fined and ranſomed for the ſame; and yet there was no Act done, Quia per Aſſiſas Foreſtæ, voluntas reputabitur pro facto: and therefore, if a Forreſter or Keeper ſhall find any man within the Foreſt, either with bow and arrows, or with Greyhounds, intending to offend there, he ſhall arreſt him and impriſon him, as if he had done the deed that he meant and intended to do. But the Forreſter or Keeper is not to arreſt the body of ſuch an offendor, except that he do take him with the manner: and note, that by the Aſſiſes of the Foreſt of Lancaſter, Taken with the manner, is when one is found in the Kings Foreſt in any one of theſe 4. degrees, viz.

Itin. Pickring, fol. 3.

Itin. Pickring, fol. 5.

Aſſi. foreſtæ de Lanc. f. 63.

Stable ſtand.
Dog draw.
Back Bear, and
Bloudy hand.

Stable ſtand is, when a man is found in any Foreſt at his ſtanding, with a Croſſe-bow bent, ready to ſhoot at any Deer, or with a Long-bow, or elſe ſtanding cloſe by a tree with Greyhounds in his leaſe, ready to let flip, this is called by the antient Forreſters Stable ſtand.

Dog draw is, where any man hath ſtricken or wounded a wild beaſt, by ſhooting at him, either with Croſſe-bow, or Long-bow, and is found with a Hound or other Dog drawing after him, to recover the ſame, this the old Forreſters do call Dog draw.

Back bear is, where any man hath ſlain a wild beaſt in the Foreſt, and is found carrying away of the ſame, this the old Forreſters do call Back bear.

Bloudy

Bloudy hand is, where a man is found coursing in the Forest, or that hath coursed, and is any manner of way imbrewed with bloud, or that is found imbrewed with bloud in any suspicious sort in the Forest, although he be not found Hunting or Coursing there. All these are said to be taken with the manner: and every Forester or Keeper that shall take any offendor or offendors in any of these degrees, he is to arrest their bodies, if he can, and to imprison them, until that they be delivered by the Kings especial commandment, or by the commandment of the Lord chief Justice in Eyre of the Forest: See more of this matter in the seventeenth Chapter of Nusances, in the fifth Division. But the punishment of such offendors, by a Judicial sentence at the Justice-seat, is, to be fined at the discretion of the Lord chief Justice in Eyre, and to be imprisoned untill that he have paid the same, and then and there to be bound to the good abearing of the Forest afterward forever.

By the Statute of 13. of Richard. 2. capit. 13. It is enacted, that if any Artificer, Labourer, or other Layman, which hath not lands or tenements to the value of forty shillings by the yeer, or if any Priest or Clerk, which hath not living to the value of ten pounds by the year, will have or keep any Greyhound, Hound, or other Dog for to Hunt, or will use Firrets, Hays, Nets or Harepipes, Cords or other Engines, for to take or destroy Deer, Hares, Conies, or other Gentlemens Game, he shall be imprisoned by the space of one whole year. [But by a late Statute made in the first year of our Sovereign Lord King James, cap. 27. all manner of persons (except such as be seised in their own right, or the right of their wives, of lands or tenements of inheritance, to the value of 10 l. by the year, or of lands, or tenements in their own right, or the right of their wives 13. Rich. 2. cap. 13.

for term of life to the value of 30 l. by the year, or be possessed of goods and chattels, to the value of 200 l. or be son of a Knight, or Baron, or of some person of higher degree, or the son and heir apparent of an Esquire) are prohibited to have or keep any Greyhound for course of Deer, or Hare, upon pain to be committed to the common Gaol for three moneths without bail or mainprise, except such offender do forthwith pay forty shillings to the Church-wardens of the Parish where the offence was committed, or the party apprehended, to the use of the poor of the same Parish.]

An. 14. H. 8. cap. 10. And likewise it is enacted by the Statute of 14. H. 8. Capit. 10. That if any person do trace, destroy and kill any Hare in the Snow with Dog, Witch, or otherwise, he shall forfeit for every Hare so killed, six shillings and eight pence. [But the said Act of 1. Jacob. ca. 27. hath enacted that he that doth shoot at, kill, or destroy with Gun or Bow, or doth trace, or course, in the snow, or take or destroy with Harepipes, Cords, or other Engines, any Hare, shall be committed to the common Gaol for three moneths without bail or mainprise, unlesse the offender do forthwith pay 20 s. to the Church-wardens of the Parish where the offence was committed, or the party apprehended, to the use of the poor of the said said Parish, or after one moneth after his commitment become bound with two sureties in Recognisance of 20 l. never after to offend in the like kind. And note, that by the said Statute of 1. Ja. ca. 27. it is further established that no person shall be punished by force of any former Statute or Law for any of the offences for which by force of that Law any punishment shall be inflicted. And although that these Statutes may very well extend to inhibite such Trespassers and offenders as shall commit any such offences in any Forests, Chases, or Parks of the Kings, yet they seem rather

ther to respect such offenders, as do or shall commit any such trespasses or offences in the proper soil of any private person, then in the Kings Forests, Chases or Parks, for as much as the Forest Laws that were before the making of the Statutes had as strongly provided for such offences and offenders in Forests, Chases, and Parks of the Kings before: and yet it seemeth that these Statutes are made but in the affirmative of the antient Law that was before, in which case the King may be at his choice to proceed against offenders, according to the one or the other, at his pleasure.

And likewise by the Statute of 19. H. 7. cap. 11. It was enacted, that if any person, having no Park, Chase, or Forest of his own, doth keep or cause to be kept, any Nets, called deer Nays, or Buckstals, he shall forfeit for every moneth that he keepeth the same, ten pounds, to any person that will sue for the same, by an action of debt, wherein no wager of Law, protection, or essoin, shall be allowed. [And by a late Statute made Anno 3. Jacob. cap. 13. If any person, not having lands of the yearly value of 40 l. or not worth in goods and chattels 200 l. shall use any Gun, Bow, or Crosse-bow to kill any deer or Conies, or shall keep any Buckstall or Engine, Nays, Gate-nets, Purse-nets, Ferrets or Cony-dogs (except he that hath ground imparked with pale, or inclosed with wall or hedge, used for keeping of deer or Conies, the increase of which Conies shall amount to 40 s. yearly to be letten, or Keepers, or Warreners in the grounds under their charge,) Then any person having land of the yearly value of 100 l. of an estate freehold at the least, may take from such malefactor, and keep to his own use such Guns, Bows, Crosse-bows, Buckstals or Engines, Nays, Gate-nets, Purse-nets, Ferrets, and Cony-dogs.]

An. 19. H. 7. cap. 11.

And likewise it is enacted by the same Statute of

Anno 19.H.7. cap.11.

19.H.7.cap.11. That whosoever doth stalk, or cause any other person to stalk with any bush or beast to any Deer, being in any Park, Chase, Forest, or without, but in his own ground, Forest, Chase, or Park, without license of the owner, Master of the Game, or Keeper of the same ground, Forest, Chase or Park, shall forfeit for every time that he or they stalketh, ten pounds to any person that will sue for the same, by action of debt, wherein no wager of Law, protection, or essoin, shall be allowed.

It seemeth that this Statute is also made in the affirmative of the Common Law that was before the Forests, so that the Law that was before the making of this Statute is not taken away, as it should have been if this Statute had been made in the negative of the antient Law that was before: so that now he that hath cause to proceed against any such offenders may be at his election, either to pursue the offenders, according to the course of the antient Laws, or else according to the course of this Statute.

But it is thought by some men learned in the Law, that this Statute was not meant nor intended to extend to such offenders in any of the Kings Forests; for as much as the King hath a chief Justice in Eyre for his Forests only, who hath by the Laws of this Realm an absolute authority given him, of himself, to hear and determine all manner of trespasses for Hunting, and all trespasses for hert and benison, done in any of the Kings Forests; and therefore they say, that it was not meant by this Statute, to diminish his authority, and give Justices of peace power and authority to deal in his office, and to punish such offenders, for Hunting in any of the Kings Forests: for which cause they say, that this Statute was made but only for a more speedy remedy and redress to be had against offenders and trespassers

passers in the Forests, Parks, and Chases of divers subjects of this Realm that they were owners of, and not to the Kings Forests. But yet we see by daily experience, that the learned Judges and Justices of Assise in every County, do hold the Law clear, that this Statute doth as well extend to the Kings Forests, as the Forests of other men, or else they would not assess fines upon offenders in the Kings Forests.

By the Statute of Anno 1. H. 7 cap. 7. it was enacted, that at every such time as any information shall be made of any unlawful Hunting by night, or with painted faces in any Forest, Park, or Warren, to any of the Kings Council, or to any Justice of Peace of the County where such Hunting shall be, of any person suspected thereof, it shall be lawful to any of the same Council, or Justice of Peace, to whom such information shall be made, to make a warrant to the Sheriff, or to any Constable, Bailiff, or other Officer of the County, to arrest and take the same person, and to have him before the maker of the same warrant, or any other of the Kings Council, or Justice of Peace of the same County: and the Counseller or Justice, before whom such person shall be brought, have power to examine him of the Hunting, and of the doers thereof, and if he conceal the offence, or any offender, it is Felony: and if he confesse the truth, and all that he shall be examined of and knoweth in that behalf, then the offence of Hunting by him done shall be against the King but trespasse fineable, to be assessed at the next general Sessions by the Justices there: and that if any rescous, or disobedience, be made to any person having authority to do execution, or Justice, by any such warrant, by any person which should be arrested, so that execution of the same warrant thereby be not had, then the same rescous and disobedience is felony, and the same

ſame felony ſhall be enquired of and determined, as other felonies be.

10. Of the ſignification of theſe two words, *Hawking* and *Hunting*.

THis word Hunter and Hunting, is ſaid to come of the French word Haunter, which doth ſignifie Frequentare; as Budæus uſeth to ſay, Frequentare feras, to Hunt after wild beaſts: And Terence was wont to ſay, Sectari belluas, apros, & cervos: Ovid uſeth this phraſe, Feras perſequi, which is earneſtly or greedily to purſue and follow after wild beaſts, as Hunters uſe to do. And therefore Hunters are oftentimes called by Budæus, Sectatores ferarum, that is to ſay, Hunters or greedy purſuers of wild beaſts: for Sectatores are properly ſuch as do purſue and follow after any thing, with ſubtile traps and engins to betray it, that they may prey upon it in the end. We read in Geneſis that Nemroth was the firſt that got unto himſelf a Kingdom, and yet he is not there called a King, but a ſtout and a mighty Hunter before the Lord; for as a holy Father, writing upon the ſame place, ſaith, Quia, ut venator feras libertate fruentes, ipſe homines ſibi compeſcuit obedire, that is to ſay, For like as a Hunter ſubdueth wild beaſts living at their own liberty, and by continuall purſuing of them, doth make them to yield to obey him: even ſo did Nemroth, by continual purſuing of men that lived after their own wills and pleaſures, make them to yield obedience unto him, and ſo to live in obedience and aw of the Law. And again in the ſixteenth Chapter of the Prophet Jeremiah, where the Prophet threatneth the puniſhment of God upon the wicked that do live idlely and wantonly at their own wills and pleaſures, ſaith, I will ſend out many Hunters to Hunt them out from

Geneſis cap. 10. b.

Johannes Pepinus.

Jere. cap. 16. d.

from all mountains and hill, and out of the Cabes of ſtone: meaning thereby that there ſhould come amongſt them ſuch perſecutors as ſhould purſue and Hunt them, ſo that they ſhall be forced to yield themſelves from a wicked life to a reformed life; and that he would ſend them ſuch perſecutors, as neither mountains, nor hills nor cabes, ſhould ſhroud them from. And therefore, in that place, the Prophet uſeth this metaphor of a Hunter, becauſe that a Hunter doth ſo greedily purſue after the wild beaſts, that by the purſuing of them he doth make them to yield themſelves unto him from their wildneſs, to become eben obedient unto him. And Cicero uſeth this phraſe, Opes conſectari, which is greedily to hunt after riches. And ſome old Foreſters do affirm, that this Engliſh word Hunter is derived of haunt Deer, or one that hunteth after deer, and now uſed generally for the hunting of all manner of wild beaſts.

And this word Hawking, or taking of any kind of fowls that are wild with Hawks, is called Hawking, of Hawk-taking, that is to ſay, of taking of them with Hawks: But Budæus uſeth to ſay, Aucupari volucres accipitre, that is to ſay, to take wild birds with a Hawk; and ſo Captare volucres accipitre, and inſectari volucres accipitre.

CHAP. XIX.

1. *That Treſpaſſers and Offenders in Foreſts ought to be attached, by the miniſters of the Foreſt, they finding them with the manner.*
2. *If that ſuch Miniſters of the Foreſt of themſelves be not able to take ſuch treſpaſſers, then they may make huy and cry after them, and ſo to cauſe the Country to riſe and take them.*
3. *If that after ſuch huy and cry made ſuch treſpaſſers and offenders*

offenders do ſtill continue their evil doing, and will not yield themſelves to be taken, then if the Foreſters, or they that do come to aid them, do chance to kill any ſuch offender in arreſting or taking of him being within the limits and bounds of the Foreſt, they ſhall not forfeit any goods, or any other thing, nor otherwiſe be arraigned for the ſame.

4. *If that any ſuch offenders will not yield themſelves to be taken, but do rather flie out of the Foreſt, to the end that they will not be known nor taken, then in ſome caſes, they are ſtill to be followed and purſued with huy and cry untill that they be taken; and in ſome other caſes, they are to be purſued with freſh ſuit within the view only.*
5. *That all the Commanders, Ayders, Receivers, and Aſſiſters, of Treſpaſſers and Malefactors in the Kings Foreſts, are all principal offenders, as well as they that did the offence: for in Treſpaſſers of the Foreſt there are no acceſſaries, as there are in Felonies.*
6. *How, and in what manner Huy and Cry ſhall be made after an offender of the Foreſt.*
7. *By whom the ſame ſhall be made.*
8. *How, and in what manner the ſame ſhall be purſued and followed.*
9. *In what manner they are to be puniſhed that do refuſe or neglect to follow the Huy and Cry, or to help to take offenders and treſpaſſers of the Foreſt.*
10. *In what caſes, and for what offences, or treſpaſſes of the Foreſt, Huy and Cry is to be made.*
11. *Whereof called Huy and Cry.*

1. That treſpaſſers and offenders in Foreſts ought to be attached by the Miniſters of the Foreſt, they finding them with the manner.

IF any maleſactors, or treſpaſſers, do chance to come into the Forest, with an intent to do hurt or treſpaſs to

to the Game of the Forest; if the Foresters in whose Bailywick they are do understand thereof, or do find them with the manner, either doing of any such trespass, or about to do any trespass of the Forest, every such Forester and other Minister of the Forest, is bound by his Office to apprehend and take such offenders and trespassers, if they can by any means. And first the Forester himself, in whose Bailywick such offenders are so trespassing, is bound by his Oath to attach them, if he can by any means: And also he is likewise bound by his Office to attach and apprehend such offenders, trespassing in his Bailiwick, upon pain of forfeiture of his Office; for if any Forester of the Forest do willingly suffer any offenders to kill or destroy the game of the Forest, and he being negligent will not attach or apprehend such offenders therefore, this is a forfeiture of his Office, as it is holden in the long Report of An. 5. Edw. 4. called Long quinto: and likewise it doth appear in Anno 5. Edw. 4. in the short Report, That a Keeper of a Park, having a grant from the owner of the same Park for that Office, together with a yearly fee for the same; and because the Deer in the Park were killed and destroyed by offenders in the Park, by the negligence of the Keeper, that was there holden for a forfeiture of his Office. And the like Law is of a Forester that hath charge of the Game in the Forest: Whereby it doth appear, that every Forester is bound upon pain of forfeiting of his Office, to attach and apprehend such offenders in his Bailiwick or walk, if he can. And it doth also appear by the Statutes and Ordinances of the Forest, called, Assisa & Consuetudines Forestæ, that not only the Foresters and Ministers of the Forest, that have charge of the Game, alone are bound to apprehend such trespassers and offenders; but also every other person that is dwelling or abiding within

Taken with the manner is, 1. Dog-drawing, 2. Stable-standing. 3. Back-bearing. 4. Bloody-hand, Co. 4. Inst. 294.

Vi. Long quint. E 4. f. 26. b. & t. 27. Trin. An. 5. E. 4. f. 5. pl 64.

Assisa & consuetudines forestæ, An. 6. E. 1 art. 11.

in

in the Forest, shall likewise do his uttermost endeavour to attach and apprehend such offenders and trespassers in Forests; for the words are these, Si quis viderit aliquos malefactores infra metas Forestæ aliquam feram capere vel asportare, debet illos capere secundum posse suum, &c. If any body shall see any offenders or malefactors within the bounds and limits of the Forest, to take or carry away such wild Beast of the Forest, he shall do what he may to take them; and if he cannot take them himself, he shall cause Hue and Cry to be made after such offenders, to the end to cause them to be taken thereby. And to the intent that every Inhabitant and dweller within the Forest should be the more willing to put this Law in execution, it is appointed and commanded by the Assises of Henry the second, called the Assises of Woodstock, that every man within the Forest shall be sworn to the Peace of the Forest, in these words, Item Rex præcipit, quod omnis homo habens ætatem duodecim annorum, manens infra pacem venationis, juret ejus pacem, ac Clerici, Laicum feodum tenentes; which is, That the King commandeth, that every man, being of the age of twelve years, remaining within the Forest, shall swear the Peace of the Forest; and also Clergy men, holding Lay-fees, shall likewise swear the Peace of the Forest: whereby it doth manifestly appear, That the ancient Laws and Assises of the Forest are, That every man abiding in the Forest must be sworn to keep the Peace of the Forest; and being so sworn to keep the Peace of the Forest himself, he may not consent to suffer others to break the Peace of the same, but that he must do his uttermost endeavour to avoid such breach of the Peace.

Assisa forestæ H. 2. Artic. 15. Called the Assises of Woodstock.

2 The

2. The Ministers of the Forest may make Huy and Cry after such offenders, if themselves cannot take them.

And as every Forester and Minister of the Forest is by his Office, Oath, and Duty, bound to arrest and attach such offenders and trespassers himself, if he can; so likewise, to the end that such trespassers and offenders in Forests shall not escape away unpunished for such offences, the Laws and Statutes of this Realm have provided, That if such Foresters and Ministers of the Forest cannot, nor be not able of themselves to take and arrest such offenders, then they may by the Statute of 21 E. 1. and also by the Ordinances of the Forest made in Anno 6. E. 1. Articulo 11. make Huy and Cry after such offenders, and thereby cause the Country to rise, and so to take such offenders, as if they were felons.

Vid. the stat. of an. 21. E 1. Assisa & consuetudines forestæ, made an. 6. E. 1. artic. 11.

Huy and Cry by the Forest Law is not to be made for trespass in Vert, but in Venison only, and cannot be pursued but only within the bounds of the Forest; and the offence must be committed within the Forest, and not within the purlieu. And this Huy and Cry may be made by any of the Kings Ministers of the Forest; but none may make Huy and Cry in such case but he that may arrest if he could catch the offender, *Co. 4. Inst. 294.*

3 No forfeiture for killing within the Forest, after Huy and Cry made, such offenders refusing to yield.

And after such Huy and Cry made, and that the Country do rise, and repair to the place where such offenders are, if they do still continue in executing their malice, or do fly, or defend themselves with force of arms, disobeying the Kings Peace; and being required to yield themselves to the Kings Peace, do refuse

fuſe ſo to do, and will not yield themſelves; then if any perſon or perſons, coming thither to aid or aſſiſt any ſuch Foreſters, or other Miniſters of the Foreſt, ſhall chance to kill any ſuch offender or offenders, being ſo found within the bounds of the Foreſt, either in arreſting or taking them, or any of them, they ſhall not be arraigned upon the ſame before the King and his Juſtices, or before any other the Kings Bayliffs, or any other within any Franchiſe, or without, nor ſhall loſe for ſo doing either life or limb, or ſuffer any other puniſhment; but ſhall enjoy the Kings Peace, as they did before.

But here let every man take heed and beware that ſuch killing be within the bounds and limits of the Foreſt; for if the ſame do chance to be done without the bounds and limits of the Foreſts, although it doth light upon ſuch as were treſpaſſers in the foreſt before, and in flying out of the foreſt, yet then the Law is otherwiſe, and the caſe is altered; for the words of the Statute are, That if any Foreſter, &c. ſhall find any treſpaſſer within his liberty, that then he may do this; but not being out of his liberty; for if that they be out of his liberty he cannot do ſo: Wherefore conſider the Statute, and peruſe it well.

21. E. 1. Called the ſtat. de malefactoribus in parcis. See the ſame in Magna Charta. f. 117. b.

And here note, That for this cauſe, and many other like cauſes that may fall out, the true bounds and limits of every Foreſt are moſt neceſſary to be known, not only unto all the Officers of the Foreſt, but unto all other perſons whatſoever.

4 When such offenders are to be followed with Huy and Cry until they be taken, and when with fresh suit within the view only.

And if that any such trespassers or offenders do chance to come into the Forest, and do a trespass there, and the Forester in whose Bailywick the same is, understanding thereof, prohibiding himself, strongly accompanied with his own men, and other neighbours and friends, cometh to the place within his Bailywick or liberty where such offenders are trespassing; and they seeing the Forester, and others so prohibided to come to take and apprehend them, they fly out of the Forest; yet nevertheless the Forester is to attach and apprehend such offenders, if he can, although that they be out of the Forest, if he pursue and follow them with fresh suit, and within his view, or otherwise not; but if he cannot so do, then the Forester is to make diligent inquiry, what persons the same were. As thus;

1 What his name and firname was.
2 In what Shire and Town he is dwelling.
3 What company he had with him.
4 What was their names and firnames.
5 In what Shire and Town they are dwelling.
6 Who were their aiders, receibers, or directors to do any such trespass.
7 What offence and trespass they did in the Forest.

And although that such trespassers and offenders of the Forest be fled out of the Forest, and are without the limits and bounds of the Forest, the Forester following them with fresh pursuit within his view, may there arrest them; but yet then in this case the Forester cannot justifie the using of any such extream and forcible means

to arrest and attach such offenders, as he might do, if they were still remaining within the bounds and limits of the forest. But if such a forester cannot in any reasonable sort arrest or attach such offenders, without some danger either to himself, or to the offenders, it shall be better and a more easier course for such foresters, to make diligent inquiry after such offenders, according to such former instructions; and then after the certainty thereof learned in every point, as aforesaid, to make a true presentment thereof at the next Swanimote, or Court of Attachments, which shall first happen for the same forest, and then upon that presentment found and certified to the Lord chief Justice in Eyre of the forest, by the testimonie of the Verderers (according to the ordinances of the forests, made in Anno 6. Edward the first, in these words, Debet forestarius hoc intimare justiciario per testimonium Viridariorum, &c. which is, that the forester in such a case, is to inform the Lord chief Justice in Eyre of the forest of such offenders, and of the same presentment against them by the testimony of the Verderers, that the same is true) he may cause such an offendor, or offendors, by his special warrant, to be arrested, wheresoever they are in England, and to imprison them, until they shall put in sureties to answer such offences and trespasses, as they have done in the Kings forest: and by this course the forester shall very well discharge the duty and office of a good forester, with less trouble and danger to himself than in the other course before. And likewise, upon such a presentment so made, as is aforesaid, such offendors may be outlawed upon a trespass at the suit of the King, if the names of such offendors be known: and therefore the name of such offendors, and the name of the Town where they do dwell is to be inquired and learned out by the foresters; As it doth appear by the Assises and Ordinances of the forest

Assisa & consuetudines forestæ, 6. E. 1. art. 11.

reſt made in Anno 6. E. 1. in theſe wozds: Si quis attachiabilis fuerit, &c. debet deſtringi per catalla ſua infra metas foreſtæ inventa: ſin autem defecerint, corpus ejus detineatur, quouſque fecerit quod debuerit: Et ſi extra metas foreſtæ fuerit manens, nomen ejus, & villa unde ſit, irrotulentur: which is, that if any man be found attachable ſoz any offence of the ſozeſt, he ſhall be diſtrained by his cattel, if he habe any within the bounds of the ſozeſt that may be found: But if he habe no cattel to be found within the bounds of the ſozeſt, then his body ſhall be attached, wheresoeber he may be taken, and detained in pziſon until that he habe done that he ought to do in that behalf: and if he be abiding without the bounds of the ſozeſt, then his name, and the Town wherein he dwelleth, ſhalbe inquired and inrolled in the Roll of the Werderers. By this it appeareth, that the ſozeſter muſt of neceſſity learn what the names of ſuch offendozs are, and of whence they are, and ſuch other neceſſary circumſtances. But here note, that no ſozeſter, noz other officer of the ſozeſt, may take upon them to arreſt oz attach the body of any treſpaſſoz oz offendoz of the ſozeſt, being without the limits and bounds of the ſozeſt; unleſs that ſuch offenders oz treſpaſſers be followed out of the ſozeſt with freſh purſuit alwayes within the biew of ſuch purſuers oz followers: foz then, in that caſe, it ſeemeth that ſuch treſpaſſers oz offenders of the ſozeſt, being ſo followed and purſued with freſh ſuit alwayes within their biew, although they be without the limits and bounds of the ſozeſt; yet nebertheleſs, the Fozeſters may arreſt and attach the bodies of ſuch Treſpaſſers and Offenders, as they might do if they were ſtill within the limits and bounds of the Fozeſt, (wounding, beating, and killing, which in ſome ſozt is juſtifiable by the ſozeſaid Statute of 21. of Edw. 1. within the limits and bounds of the Fo-

Aſſiſa & conſuetudines ſoreſtæ art. 5.

rest, only excepted,) and the reason is, because that when such Offenders or Trespassers are trespassing in the Kings forest, then the forester hath a sufficient authority and warrant by his Office, to arrest and attach such Offenders and Trespassers, to answer the King for the said Trespass and Offence: And if such Offenders or Trespassers, because they will not be arrested or attached, do flye out of the limits of the Forest, yet the forester, in that case, following them with fresh suit within his view, may arrest and attach their bodies, and imprison them, or cause them to find Sureties and Pledges to answer for such Trespasses and Offences unto the King: For, as I take it, in this case, the Office and Authority of a forester, in arresting such Offenders, is like unto the office and authority of a Sheriff, declared in 2. Ed. 4. who having a writ delibered him to arrest a man being within his County, and in coming towards him to arrest him, he seeth him come, and flyeth into another County; in this case, the Sheriff may freshly pursue him within his view, and take and arrest him in another County: But yet, in that case, he may not assault nor beat him, for that he was not arrested before in the first County: But if he were first arrested in the county, where he was first found, and afterwards flye into another County with his sword naked in his hand, then he may pursue him, and assault and beat him to take him again. And likewise in 13. Ed. 4. it was holden, that if the Sheriff do come to arrest one, and he flie from him into another County, there he may freshly pursue him, and arrest him in the other County. And it seemeth, that a forester or keeper of the Kings Forest may do the like, as it hath been holden by the opinion of the learned heretofore: but this is but in case where the forester, or other such like minister of the forest, do follow and freshly pursue such

P. Schæ 2. Ed. 4. fol 6 pla. 74.

13. Ed. fol. 8. & 9. pla. 4.

ſuch offenders within his view, or elſe that he habe eſpecial warrant and authority from the Lord chief Juſtices in Eyre of his Majeſties foreſt, to arreſt ſuch offenders whereſoeber they ſhall be found: Then, by ſuch ſpecial authority and warrant a foreſter or any other perſon may arreſt or attach the body of any ſuch treſpaſſer of the foreſt, whereſoeber they ſhall be found or taken. And in ſome caſes, offenders in foreſts may by their treſpaſſing there commit felony in taking of a wilde beaſt, after that the ſame is killed: As for example, if any foreſter of the Kings foreſt habe ſlain a Deer, for the uſe and ſervice of the King, and leabing the ſame in the foreſt in ſome certain place, while he doth go to his lodge or houſe for a horſe and help to carry the ſame away, offenders being then in the foreſt, ſeeing him gone, and the Deer to be left there, they do with a felonious intent take and carry away the ſame Deer; this is felony by the Law, and the offender in that caſe is to ſuffer and forfeit for the ſame, as in other caſes of felony. And I take the Law to be ſo, by the reaſons of theſe books and Caſes following.

First, it appeareth in 12. Lib. Aſſ. that a foreſter was indicted, for that he did felonionſly cut down and carry away certain trees; but the Juſtice could not arraign him for that act, as for felony; for they ſay, that the trees growing there are things annexed to the freehold, of which a man cannot commit felony: But if the trees had been cut down by the Lord or owner of them, and then the foreſter had carried them away with a felonious intent; this had been felony. And by the ſame reaſon, if a treſpaſſer in the foreſt do take a deer in the Kings foreſt in his wildeneſs; this is but a treſpaſs of the the foreſt: But if a Deer be firſt killed by the foreſter or owner of the foreſt, and then afterward by another taken away with a felonious intent, then the ſame is fe-

12. Aſſiſarum. pla. 32.

lony in him that so doth take the same away. And in
22. Ass.pl.95. 22. in the book of *Assises*, it is holden, that if a man do with a felonious intent take Dobes or Fishes in their wildeness, that cannot be said to be felony: But if dobes be taken out of a house, or fish out of a trunk, with a felonious intent, then such taking of them is felony: then
T.12.H. 8. fol. 3. fol. 4. per Brook. eadem ratione, if a man do take deer in a forest in their wildness, and carry them away with a felonious intent, yet that is but a trespass: but if the deer be killed by the owner of the forest, or by the forester, and afterwards another man with a felonious intent do take and carry the same away, that taking is Felony.

18.H.8.fol.2. pl. 11. And in like manner it is holden in 18.H. 8. that if a man do take Apples out of an Orchard growing upon the trees, or cut down trees, and carry them away, or Corn growing upon the ground; although that the same be taken with a felonious intent, yet that taking is not felony; for that, that at the time of the taking of the same away, the same was parcel of the freehold, and therefore it cannot be said to be felony: But if Apples be gathered from the trees by the owner, and left in the Orchard, and another man with a felonious intent doth take them away, that is felony: Or if a man do take away trees that are felled, or corn that is reaped and left in the field, that is felony; Eadem ratione, if deer be taken in a forest in their wildeness, that taking is but a
Paschæ 18. Ed. 4. fol. 8. plac. 7. trespass: but if they be killed by the owner or forester, and afterwards taken away with a felonious intent, that taking is felony.

M.18.H.8.f.2. pla.11: It is also holden in 18. H.8. that if young Herons, or Swans be taken out of the nests, or else a Buck or Hind, which is domestical and tame, be taken away with a felonious intent, that taking is felony: And then by the same reason, deer which be killed be out of their wild

wild nature, and of the nature of tame Deer, and therefore the ſtealing of them from the owner is felony: And then in ſuch a caſe, when any ſuch maleſactors, that have committed any ſuch fact within any of the Kings Foreſts that is by the Law felonie; Then Huy and Cry may be made after them, whitherſoever they do go, as after felons at the common law, until that they be taken and apprehended for the ſame: But whether a foreſter may ſo purſue and follow after him that hath committed but a treſpaſs of the foreſt only, with ſuch Huy and Cry, whitherſoever he goeth, being out of the foreſt, *Quære*, for I do doubt of it. The words of Aſſiſa & conſuetudines Foreſtæ are theſe: Si quis viderit malefactores infra metas foreſtæ aliquam feram capere vel aſportare, debet illos capere ſecundum poſſe ſuum: Et ſi non poſſit, debet levare huteſium & clamorem: Et ſi non fecerit, remaneat in miſericordia Domini Regis; If any man ſhall ſee any maleſactors within the bounds of the foreſt to take or carry away any deer (or wild beaſt) for ſo are the words, he ſhal do what he may to take them: but if he cannot take them, then he ſhall leby Huy and Cry; and if he do not ſo, then he ſhal remain in the Kings mercie. It is thought by ſome, that this Huy and Cry is to be made but only within the bounds of the foreſt to take them: And they do the rather think ſo, by the words of the 10. article, being the next before in the ſame Aſſiſes of the foreſt, where the words are theſe, Si quis ceperit feram ſine warranto in foreſta, corpus ſuum arreſtetur, ubicunque inveniatur infra metas foreſtæ: So that by that article it appeareth, that, if any man, as a treſpaſſer of the foreſt, do kill and take a deer, his body ſhall be arreſted, whereſoever he may be found within the bounds of the foreſt: Therefore, without the bounds of the Foreſt (ſay they) the foreſter may not arreſt him by his body, except he be followed with freſh ſuit within

Aſſiſa & conſuetudines foreſtæ, Artic. 11. Anno 6. E. 1.

Ibid. Artic. 10.

within the view, as aforesaid: and then by the same reason that the forester cannot arrest the body of such a trespasser, being without the bounds of the forest; By the same reason, he cannot pursue such a trespasser with Hue and Cry, to cause him to be arrested and taken without the limits and bounds of the forest.

5. That none are accessaries in the trespasses of the Forest, but all are principals.

And concerning trespassers and offenders in the Kings Forests, this one thing is specially to be noted: That all Commanders, Aiders, Receivers, and Assisters of malefactors in the Forest, wittingly, they are all principal trespassers, as well as they that do the fact it self: for in trespasses of the Forest there are no Accessaries, but all are principals: For it appeareth by the Assises of Pickring, that if a man do receive any benison of a trespasser in the Forest, he shall be as well punished, as he that did the trespasse in the Forest. And it is also there holden, that if any man do procure aid, or receive any other man into his house within the Forest, to the intent the same person may there do any trespasse or offence in the Forest, every such aider, procurer, and receiver, is a principal offender and trespasser of the Forest, and shall be punished, in every degree, as the principal actor himself shall.

Assisa forestæ de Pickring, fo. 3. fol. 5. Ibidem.

And it doth appear by a case of Hunting, in 13. Henric. 7. that if a man do command another man, or divers men, to do a trespasse in the Kings Forest, as to hunt or chase the deer in the Forest, or in a Chase, Park, or Warren, in that case, the commander is as well a principal trespasser in the Forest, as they that were there to do the fact: for in trespasses all are principals, and there are no Accessaries in such Trespasses.

Hill. 13. H. 7. fol. 12. pla. 1. fol. 13. pla. 5. 38. E. 3. f. 18. 38. Ass. pla. 6. 22. Assisarum, pla. 43.

6. How,

6. How Huy and Cry shall be made after an offender of the Forest.

And as for Huy and Cry after such trespassers and offenders in the Forest, how and in what manner the same shall be made: It is to be understood that when any Forester, or other minister of the Forest, shall find any such malefactors or trespassers within the Forest, doing or intending hurt or damage to the Forest, and will not obey the arrest of such Forester or other minister, then they are forthwith to make an out-cry unto the inhabitants and next dwellers within the same Forest, where any such offenders shall so be found, willing and requiring them in the Kings name (seeing that such offenders will not obey the arrest of the said officers) to aid, help, and assist them to pursue and follow such malefactors and trespassers, from Town to Town, Village to Village, and place to place, within the limits and bounds of the Forest, until that by reason thereof they be taken: and then they being so taken with the manner, they shall be imprisoned and there detained, untill that they shall find sufficient sureties and pledges, to answer the King for the same trespasse, before the Lord Justice in Eyre of the Forest; and such imprisoning or taking of taking of sureties and pledges of such trespassers and offenders in the Forest by the Forester, is justifiable by the Laws: as it doth appear in 45. Ed. 1. where one brought an action of trespass against a Forester of a Forest, for the taking and imprisoning of the plaintiff at such a place: and there the defendant pleadeth that he was a Forester in fee of the Forest of B. and that the plaintiff at a certain Court of Swanimote holden for the same Forest, was presented by the Foresters, Verderers, Regarders, and Agisters of the same Forest, that the

Paschæ 45. Ed. 3. fol. 7. plac. 8.

the said plaintiff had chased within the said Forest, and there taken one deer, whereupon the defendant came to the plaintiff, and prayed him to find pledges to answer the same offence before the Justices in Eyre of the Forest in the Country, which he refused to do, by reason whereof the said defendent did detain him in his custody, until he had performed the Statute in that behalf; and upon that plea the issue was taken: whereby it was well proved that the Forester might have taken pledges of him, and so have delivered him; and also that it was lawful for the Forester, to detain him in his custody and to imprison him, until he did find pledges: or otherwise, when any such Forester or other Minister of the Forest, shall so take any such offenders or trespassers of the Forest, they may carry them before the Lord Justice in Eyre of the Forest, and there relate all the whole matter and the manner of their trespass and offence that they have done, and thereupon the Lord Justice in Eyre will either take pledges of them to answer the said trespasse, or else commit them to prison.

7. By whom Huy and Cry shall be made.

BUt now to return again to my former matter of huy and cry, and by whom the same huy and cry shall be made after such offenders and trespassers of the Forest: in this case it is to be noted, that this Huy and Cry of the Forest is most properly to be made by the Forester himself, because that most commonly he is a man well known unto the Country: and therefore every man will the more willingly be ready to follow the same: But yet nevertheless, any other officer or minister of the Forest, or any other inhabitant of the same, may very well in such a case make huy and cry upon and after such offenders, as it doth plainly appear by the very letter of the Law

Law in the Aſſiſes and Ordinances of the foreſt, in theſe words, Si quis viderit malefactores infra metas foreſtæ, &c. debet illos capere ſecundum poſſe ſuum, & ſi non poſſit, debet levare hutesium & clamorem: Where note, that the words are general, that is to ſay, If any many ſhall ſee any offenders or malefactors within the bounds of the foreſt, he ſhall to the uttermoſt of his power take them; but if he cannot take them, he muſt make Huy and Cry after them, or elſe he ſhall remain in miſericordia Regis for the ſame.

Aſſiſa & conſuetudines foreſtæ edit' In an. 6. E. 1. art. 15

8. How Huy and Cry ſhall be followed.

And after Huy and Cry ſo made as aforeſaid, the ſame is ſtill to be followed and purſued with freſh purſuit, after ſuch malefactors and offenders, ſo long as they are remaining within the bounds and limits of the foreſt, until that they ſhall be taken thereby.

9. The puniſhment of thoſe that refuſe to follow Huy and Cry, and to help to take offenders in the Foreſt.

And if that any Village or Townſhip within the limits and bounds of the foreſt, after ſuch Huy and Cry made by any miniſter of the foreſt, as aforeſaid, be negligent in any point, to aid or help them to take ſuch offenders, or to purſue or follow after any ſuch malefactors, or do refuſe to purſue and follow the ſame: then every ſuch default of any one perſon, or village, or townſhip, ſo offending, ſhall be preſented by the foreſter of the ſame Bailiwick, at the next Court of Swanimote, or Juſtice-ſeat, which ſhall firſt happen: and if afterwards upon that preſentment of the foreſter, the offenders therein ſhall be duly convicted according to the order and common courſe of the Laws of the foreſt in that be-

Itiner. Lancast. fo.7.

behalf: Then shall the Township, Village, or party so offending, be well fined for the same: as it doth appear in Itinere Lancast. fol. 7.

10. When, and for what offences Huy and Cry is to be made.

Assis & consuetudines foreſtæ fact' in an.6.E.1.

BUt it seemeth as well by the antient Articles of Huy and Cry: as also by the Assises and Customs of the Forest, made and set forth in An.6.Ed.1. that such Huy and Cry is not to be raised nor made by any minister of the Forest, for every trespass and offence that may be done in the Forest: but only for some certain particular trespasses of the forest, that is to say, for such trespasses and offences as are done in hunting and destroying of the wild beasts of the Forest: as it doth appear in the same Assises of the Forest, made in Anno 6. Ed.1. articulo 11. in these words: Si quis viderit aliquos malefactores infra metas foreſtæ aliquam feram capere vel asportare, debet illos capere secund. posse su': Et si non possit, debet levare hutesiu' & clamorem: Et si non fecerit, remaneat in misericordia domini Regis; so that by this it is plainly declared, that if any man shall see an offender in the Forest about to take or carry away any Deer, he shall take such an offender if he can: but if he cannot take him, then he is to make huy and cry after him: so then huy and cry is to be made, but after such as are hunters and takers of benison in the Kings Forests, and not after such as shall commit a trespasse in the bert of the Forest.

Assis & consuetudines foreſtæ, art.11.

11. Whereof called Huy and Cry.

THese words, Hue and Cry, the first being a Latine word, the other a French word, are antient words of

of uſe in the Laws of this Realm, & verba ſunt dolentis, they are always words of weeping and lamenting, and do ſignifie ſome ſudden chance that hath hapned or fallen out, for the redreſs whereof men do commonly uſe to cry to other for help: and in the 10. Chapter of Tobias, when old Tobias and his wife ſaw that their ſon returned not again, fearing that there had chanced ſome ſudden misfortune unto him, the woman in her ſudden grief uttered theſe words, Heu, heu, me, fili mi, ut quid te miſimus peregrinari, Alas, alas, wo is me my ſon, O what meant we to ſend thee away into a ſtrange Country! And this word Cry, in French, is a ſudden ſhout or out-cry for help; and according to that ſence, theſe words have always been in uſe in this land; ſo that when a man hath received any ſudden hurt or harm, either towards his own perſon, or his goods, by felons, thiefes, or ſuch like offenders, then they that have ſo received the ſame, have uſed preſently to follow and purſue the offenders with Huy and Cry, that is, with a ſorrowful and lamentable cry, for help to take ſuch offenders.

Tobiah in the 10. chap.

CHAP. XX.

1. *What Purlieu, or rather Pourallee, is.*
2. *How the ſame did firſt begin.*
3. *Whereof it took the name of Purlieu, Pourluy, or Pourallee.*
4. *That the Purlieu in ſome ſort is Foreſt ſtill.*
5. *That yet nevertheleſs the Purlieu is free for ſome men in ſome ſort to hunt there.*
6. *Of the difference between the Foreſt and the Purlieu.*
7. *Of the difference between the Purlieu, and that which is no Purlieu, nor Foreſt, but is abſolutely free.*
8. *Who may hunt in the purlieu, and who ſhall be ſaid to be a purlieu man.*

9. In

9. *In what sort a purlieu man may hunt in the purlieu.*
10. *When, and how often, a purlieu man may hunt there.*
11. *How far a purlieu man may pursue and follow after his chase.*
12. *When, and in what cases a purlieu man may pursue and follow his chase into the Forest, and there take and have the thing so chased and killed, and when not.*
13. *Of the Ordinances and Laws of the Purlieus, and of their first beginning.*
14. *How, where, and in what sort the offences and trespasses that are done and committed in the purlieus shall be tried and punished.*
15. *That because in some sort the purlieu is Forest still, therefore the King hath certain Officers there that do attend upon the same, and have charge of the purlieus, which are called Rangers, being Officers rather to the Forest, than in the Forest.*
16. *How a Ranger is made, what his Oath, Authority and Office is, and wherein the same doth chiefly consist.*
17. *Whereof called Rangers, or Ranger.*

1. What Purlieu, or rather Pourallee, is.

It cometh of the French word pur, clear, entire and exempt; and lieu, that is, a place, i.e. a place exempt from the Forest, Co. 4. Inst. 303.

Purlieu, or Pourallee, is a certain Territory of ground adjoyning unto the Forest, meered and bounded with unmoveable marks, meers, and boundaries, known by matter of Record only: which Territory of ground was also once Forest, and afterwards disafforested again by the perambulations made for the severing of the new Forests from the old.

And the perambulation whereby the purlieu is disafforested, is called in French pourallee, i.e. perambulation; so that the purlieu and pourallee are two distinct things, and purlieu is the right name of the place disafforested, Co. 4. Inst. 303.

2. How

2. How the same did first begin.

And the Pourallee, or Purlieu, as some men do call it, did first begin in this manner, that is to say: When King Henry the Second of that name (a French man born, the second son of Jeffery Plantagenet Earl of Anjou, begotten of Maude the Empresse; and therefore called of many Henry fitz de Empresse) came first to be King of this Land, which was in the year after the Incarnation of our Saviour Christ 1154. he took so great delight and pleasure in the Forests here in this Land, that being not contented with those Forests that he then found already made (although they were many in number, and very large and great in compass) he began, yea even within a few years after, to enlarge divers great Forests, and to afforest the Lands of his Earles, Barons, Noblemen, Gentlemen, and others that were any way neer adjoyning unto those Forests, and thus they continued during all the time of his Reign: And after his decease, King Richard the First, his second son, succeeded him, as next heir unto the Crown; when he came to be King of this Land, within a short time after, he began to follow the steps and examples of his Father, not only in the delight and pleasure that he took in Forests, but also in the daily afforesting of all such lands that were any way neer adjoyning unto any of his Forests: By reason whereof the inlarging of Forests did more and more increase continually during the Reign of these two Kings: And after the decease of the aforesaid King Richard the First, King John his brother, the youngest son of the said King Henry the Second succeeding him, as next heir unto the Crown, came to be King of this Realm, in the year after the Incarnation of our Saviour Co. 4. Inst. 303.

bior Christ, 1199. This King John, in like manner, within a while after that he came to be King, began by little and little to follow the examples of his father King Henry the second, and King Richard the first his brother, in afforesting of the lands of his subjects, that were any way nér adjoyning unto any of the forests of the said King: so that by the new afforestations of these three foresaid Kings the Forests in every place were so much inlarged, that the greatest part of this Realm was become Forest, to the great grief and sorrow of all the best sort of the Inhabitants of this land: for, by reason that the boundage of the Forest was then so great, and the Laws so sharp and cruel it was almost impossible for any man that was dwelling or abiding within the limits and bounds of the Forest, to live without the danger thereof. And in this state the same continued until the sevententh year of the reign of the foresaid King John, which was in the year of our Lord, one thousand two hundred and fifteen; at which time, because that this thing was then no particular grief to any one man alone, or to a small number of men, nor yet unto the meanest persons, but even a general grief and mischief unto the whole Commonalty of this land; By reason thereof, divers Lords and Noble men, together with certain gentlemen of great account, finding a meet opportunity of time, offered to effect such a matter; yea even when they might, as it were, assure themselves that the King would not deny them their suit, made their repair to the King, and earnestly besought this King John to grant them, that they might have all those new afforestations that were so afforested by King Henry the second his Father, King Richard the first, his brother, or by King John himself, disafforested again: and also, that he would likewise grant and confirm unto them such liberties and privileges,

biſhedges, concerning foreſts, as they in certain Articles had already amongſt themſelves agréed upon and ſet down: All which things the ſaid King John at the firſt ſeemed not unwilling to grant, but promiſed them that he would grant the ſame accordingly: For obtaining whereof, the Lords, Noble men, and others, came within three miles of Windſor, where King John then lay, and there they pitched down their Tents in a Meadow betwixt Stanes and Windſor; to which place King John himſelf came the 15. day of June, in the eighteenth year of his Raign, and there ſhewed ſuch friendly countenance towards every one of them, that they were then put in good hope, that the King meant no leſs towards them then he had before promiſed: At which time and place, after that he had well weighed and conſidered of every matter, and what thing was then meeteſt to be done in reſpect of that time, and intending thereby the rather greatly to ſtrengthen his force againſt his enemies, by joining with the Barons and Noblemen of this Realm; at the laſt he conſented to ſubſcribe and ſeal to ſuch articles, concerning the liberties of the foreſt, which they then demanded, being for the moſt part in ſuch ſort as the ſame is now contained in Charta de Foreſta, then beginning, Johannes Dei gratia, &c. Rex, &c. And the date of this Charter was in theſe words, Given by our own hand in the Meadow called Kuningſemead, or Ryme-mead, between *Stanes* and *Windſor*, the 15. day of *June*, in the eighteenth year of our Raign. At which time of granting of the foreſaid Charter, the King did not only grant unto them their whole requeſt in every thing touching the foreſaid liberties; but alſo was contented, that they ſhould chuſe out certain and grabe and honourable perſonages, which ſhould have authority and power to ſee thoſe things performed which he then granted unto them:

Hollenſhed pag. 185. b. 50. and 60. See *Matthew Paris* according to the ſame.

See the Records in the Tower in the time of King John accordingly.

See 4. Inſt. 298.

See Rayn Wolf. p. 186. a. 10.

them: Whereupon they named and made choice of divers most worthy Earls, namely these, The Earls of Clare, Albemarle, Glouceſter, Wincheſter, and Hereford; Alſo Earl Roger, Earl Robert, Earl Marſhal the younger, Robert Fitzwater the younger, Gilbert de Clare, Euſtice de veſcy, Hugh Bigot, William de Mowbray, The Mayor of London, Gilbert de la Vale, Robert de Roos, John Conſtable of Cheſter, Richard de Percie, John Fitz Robert, William Mallet, Geffrey de Say, Roger de Mowbray, William de Huntingfield, Richard de Mountfychet, and William de Albeny;

These five and twenty were ſworn to ſee the foreſaid liberties, ſo granted and confirmed by the King, to be in every point obſerved: And as the Records of that time do declare, there were alſo divers other moſt worthy Earls and Barons (whoſe names were here too long to ſet down) that were ſworn to be aſſiſtants unto theſe foreſaid five and twenty Peers, in ſuch things as they ſhould appoint, for the better accompliſhing of the foreſaid grant. And furthermore, the King hereupon ſent his Letters Patents unto the Sheriffs of all the Counties of this Realm, commanding them to ſee thoſe Ordinances and Liberties which he ſo had granted and confirmed, to be diligently obſerved and kept; yea and more than this, he alſo procured the Pope to confirm the ſame. And yet for all this it ſo fell out, that before that any diſafforeſtation of thoſe Lands, ſo newly afforeſted by King Henry the ſecond, King Richard the firſt, or by the ſame King John, as aforeſaid, were made, or any other great matter performed, concerning theſe Liberties which the King had granted; this King John dyed in Newark Caſtle in Nottingham Shire: After whoſe deceaſe, Henry the third, being eldeſt ſon of the foreſaid King John, and of the age of nine years, came to be King of this land, in the year of our Lord God

God 1216. and thus time still passed away from day to day, so that little or nothing being yet done concerning the disafforestation of those foresaid new afforestations, which was the whole effect of the greatest matter then required to be put in Execution, until the ninth year of the Raign of this King Henry the third: And then this King Henry, holding his Christmas at Westminster, called his high Court of Parliament there the same time, and demanded a relief of money towards the maintenance of his wars in France, and had granted unto him the fifteenth peny in value of all the moveable goods to be found within the Realm, aswel belonging to the Spiritualty as Temporalty, but yet under condition, that he should confirm unto his subjects their often demanded liberties. And therefore in the Charter of the confirmation of the disafforestation of all those foresaid new afforestations, so granted by the same King Henry the third, this consideration is there set down, viz. in consideration of a full fifteenth peny in value of all their moveable goods to be found within the Realm, aswel belonging to the spiritualty as to the temporalty: so the King, desirous to have the money, was contented to condescend unto their requests; and so then the two Charters were made, and by the said King confirmed; The one called Magna Charta, and the other Carta de foresta: and these two charters, at this Parliament so made and confirmed, being so good laws and laudable ordinances, they have from time to time been confirmed by the Kings and Princes of this Realm; so that a great part of the Laws of this Realm, now at this day in use, doth depend upon the same. This King also caused these two Charters to be sent forth into every county within this Realm, to be published and proclaimed. And, whereas in the first Article of Charta de Foresta it is granted in this manner, In primis omnes forestæ, quas Henricus avus

An. Dom. 1215 Anno Regni Regis Hen. 3. nono, at a parliament at Westminster. See the Records in the Tower, and in Raine Wolf, pag. 207. a. 30. a. 40.

See in the Tower in Rotulis perambulationum foresti. Istar. in Anno 39. E. 1.

Charta de Foresta, artic. 1.

noster afforestavit, videātur per bonos & legales homines; Et si boscum aliquem alium quam suum dominicum afforestaverit, ad dampnum illiuscujus boscus ille fuerit, statim deafforestetur; & si boscum suum proprium afforestaverit, remaneat foresta, salva communia de Herbagio, et aliis in eadem, illis, qui eam habere consueverunt: All forests which King Henry our grandfather afforested and made shall be viewed by good and lawful men; and if he have made forest of any other mans woods or lands, more than of his own demeasne woods and lands, whereby the owner of the same hath hurt; we will, that forthwith it be disafforested; and if he have made forest of no other mens woods or lands but of his own, then we will that it remain forest still, saving the common of herbage and of other things in the same forest to them which before were accustomed to have the same. And also in the 3. article, it is granted in this manner, Omnes autem bosci qui fuerint afforestati per regem Richard. avunculum nostrum, vel, per regem Joh. patrem nostrum, usq; ad primam Coronationem nostram, statim deafforestentur, nisi sit dominicus boscus noster: all woods and lands which have bin afforested by king Richard our Uncle, or by king John our father, unto the time of our first coronation, shall be forthwith disafforested, except the same be our own demeasne woods and lands. And for the better accomplishing and performing of those two articles of Charta de foresta, for the disafforestation of such woods and lands as were so newly afforested by King Henry the second, King Richard the first, or King John, it was moreover decreed by the said Henry the third, that, at a certain day after Easter then next ensuing, there should be an inquisition taken by the Inquest of a substantial Jury, for the severing of Forests, the new from the old; so as all those grounds and woods which had been made Forests since the

Charta de Foresta, art. 3.

Rayn Wolse, pa. 207.a.50.

days

days of King Henry the Grandfather of this King Henry the third, should be disafforested: and thereupon, after Easter, Hugh de Novile, and Bryon de Lysle were sent forth as Commissioners to take those Inquisitions: by force whereof, many great woods and lands were not only disafforested, but also assarted and improved to arable land by the owners thereof. And so, not only men that then were dwellers and inhabiters in those places, but also dogges, which for safegard of the game were accustomed before to lose their clawes, had good cause to rejoyce for these disafforestations and confirmed liberties so granted. So that now after this Charter thus made and confirmed, some of these new afforestations were perambulated; and after such inquisitions taken, and the certainty known by matter of record, what woods and lands, were so newly afforested by any of those three foresaid Kings since the time of the first Coronation of King Henry the second, they were disafforested by King Henry the third. But yet nevertheless, the greatest part of those new afforestations were still remaining to be disafforested during the life of the said King Henry the third; and then after his decease, Edward the first, surnamed Longshank, being eldest son of the foresaid King Henry the third, succeeding his Father, as next heir unto the Imperial Crown of this Realm, began his raign the two and twentieth day of November, in the year of our Lord 1273. which King being oftentimes required and urged, aswel by the Nobility, as also by the commonalty of this Realm, to confirm unto them those foresaid liberties, which his Father before had granted, was contented to confirm their Charters, even as they did require the same: and now, when that they had all things granted, perfected and confirmed, as they could wish or desire, concerning the said two Charters, they delibered the same so sealed,

See in the Tower in the Rolls of the perambulations of forests made in the time of H. 3.

Rayne Wolf pa. 207. n. 50.

signed, and confirmed, unto the Sheriffs of London, that the same might be read openly before the people, which thing was done accordingly in St. Pauls Church-yard, in the presence of a great assembly, that were then there gathered together for that purpose. And hereupon presently after, the Lords and Commons of the Realm began to call upon the King, that forthwith perambulations might be made of all those foresaid new afforestations, so that the same might thereby be disafforested, according to the first and third articles of Charta de foresta.

See the Records in the Tower in the time of K. E. 1.

Rayne Wolf ps. 308. b. 10.

And thereupon, the perambulations of all such forests as were any way enlarged by any new afforestation of King Henry the second, King Richard the first, or King John, were appointed unto three Bishops, three Earls, and three Barons: and they, having commission from the King under the great Seal of England, caused divers perambulations of those new afforestations to be made, and after such perambulations so made, and inquisitions taken, by good and sufficient men of the County, and returned into the Kings Court of Chancery, whereby the King was ascertain'd, what woods and lands were ancient forests before any such new afforestation, and what woods and lands were newly afforested, the King then caused all those that were ancient forests, to be mered and bounded with unremoveable Marks, Mers, and Boundaries, to be known by matter of Record for ever afterwards, by reason that the same was so returned into the Kings court of Chancery: And also, those woods and lands, that were so newly afforested by any of those three Kings aforesaid, the King caused them to be severed from the old, and to be returned into his court of Chancery by Marks, Mers, & Boundaries, to be known by matter of Record likewise for ever afterwards. And after all this done, to the intent that perpetual memory might remain, what woods and lands were

were ancient Foreſts, which were meant to continue Foreſts ſtill, and alſo what woods and lands were newly ſo afforeſted by any of the Kings aforeſaid, and which by theſe perambulations were ſevered from the old, to the intent to be diſafforeſted, the King by his Letters Patents under the Great Seal of England, reciting the perambulations, as they were made and returned into the Kings Court of Chancery, of all ſuch new afforeſtations, by ſuch Marks, Meers, and Boundaries, as they were then there returned and certified of Record, did thereby grant and confirm the ſame; and that all ſuch new afforeſtations as were by thoſe perambulations and inquiſitions ſevered from the old, to be diſafforeſted, ſhould ſo remain and be diſafforeſted for ever: And alſo, That all thoſe woods and lands that were ancient Foreſts before any ſuch new afforeſtations, ſhould likewiſe by ſuch Marks, Meers and Boundaries as they were then returned and certified of Record, remain and continue Foreſts ſtill. And to the end that the manner of the doing thereof may the better be underſtood and perceived, I have here ſet down two perfect Preſidents thereof, the one for the Foreſt of Waltham, the other for the Foreſt of Windſor, which are as follow.

Edwardus Dei Gratiâ Rex Angliæ, Dominus Hiberniæ, & Dux Aquitaniæ, omnibus ad quos præſentes literæ pervenerint, Salutem. Sciatis, quod cum Communitas Regni noſtri nobis conceſſerit quintamdecimam omnium bonorum ſuorum mobilium, quæ habebunt in Feſto Sancti Michaelis proximo futuro, extunc taxandorum, quæ quidem quintadecima poſt hujuſmodi taxationem colligi debet, levari, & fideliter nobis ſolvi, Volumus & concedimus pro nobis & hæredibus noſtris, quod perambulationes factæ coram dilecto & fideli noſtro Radulpho de Hengham & ſociis ſuis ad hoc aſſignatis, per præceptum noſtrum, de Foreſtis noſtris in Comitatu Eſſex, de cætero teneantur & obſerventur per metas & bundas con-

tentas in eiſdem perambulationibus, quarum tenor de verbo ad verbum ſequitur in hunc modum;

ſſ. Perambulatio Foreſtæ in Comitatu Eſſex, facta apud Chelmesford, Die Veneris in Craſtino Aſcenſionis Domini, Anno Regni Regis Edwardi filii Regis Henrici viceſimo octavo, coram Dominis, Radulpho de Hengham, Willielmo Troſſel, Stephano de Graveſend, & Willielm. de Sutton, Juſticiariis Domini Regis ad dictam perambulationem faciendam aſſignatis, *viz.* per Dominos, Robertum de Sancto Claro, Hugonem de Blunde, Thomam de Maundevill, Walterum le Baude, Willielmum de Haningfield, Johannem Heron, Radulphum de Hemeuhale, Willielm. de Horkeley, Johannem de Preers, Johannem de Sutton, Milites; Johannem Dowe, Johannem Malegraffe, Matheum de Branketree, Sewallum de Waleton, Edmundum de Badewe, Richardum de Clovil, Rogerum Bokſcyn, Richardum le Dukes, Robertum le Walies, Thomam de Septem fontibus, Warinum Code, Willielmum de la Rokele, Johannem de Slamondeſhey, Lucam Morel, & Thomam de Ulting, Juratos, qui inceperunt predictam perambulationem die predicto, ad pontem de Stratford vocatum le Bowe, ſub quo currit Ripa de Luye, & ſic eundo in Hundred' de Becontree per Regiam viam uſque Hyleford, & de Hyleford directè per eandem viam Regiam quæ ducit verſus Romford, uſque ad quandam crucem ſitam ad caput cujuſd' venellæ vocatæ Wytheſlane in villa de Havering, & ab illa cruce retornando verſus Auſtrũ per hayam, quæ eſt diviſa inter terram Gilberti Godebold de feodo Abbatiſſæ de Barking, & terram Johannis Atte Withe de feod' de Havering, quæ haya eſt diviſa inter villas de Havering, & Dakenham, & ſic per illam hayam uſque ad foſſatum Johannis de Franſith, & Agnetis Atte, Withe de Dakenham, & ab illo foſſato uſque ad Regiam viam quæ ducit de Yleford uſque ad Monaſterium cornutum, ſicut quædam aqua decurrit ex tranſverſo ejuſdem

viæ,

viæ, quæ aqua vocatur Wythedenbroke, & eſt diviſa inter Havering & Dakenham. Et ab illa aqua uſque ad quendam locum vocatum la Berwe, cum tota pecia terræ, in qua prædictus locus vocatus la Berwe exiſtit, ſicut diviſa ſe extendit inter villas de Havering & Dakenham uſque ad quendam curſum aquæ vocatum la Borne, quæ aqua decurrit de quodam fonte vocato Havering Welle uſque ad quendam locum vocatum Dakenhambeem, & ab illo loco uſque ad filum aquæ de Tamiſe, per quoddam foſſatum vocatum Marke dike, inter Havering & Dakenham. Et ſic per Tamiſiam uſque ad fletum vocatum Wadefleet, extendens ſe uſque ad quendam pontem vocatum Reynhambeem, quod fletum dividit villas de Havering & Reinham in Hundred de Chafford, & ab illo pontem vocatum Reinhambeem directè uſque ad pontem vocatum Dellebregge, ſicut aqua decurrit, quæ eſt diviſa intet Hundred' de Becontree & Chafford, & ab eodem ponte uſque ad quendam alium pontem vocatum Weldebornebregge ſemper per rivulum qui dividit villas de Havering & Welde Abbatis, & ab illo ponte per eundem rivulum uſq; ad quandam diviſam vocatam Markthorn, quæ dividit villas de Havering Welle Abbatis & Naſtock in Hundred' de Aungre & ſic in Hundred' de Becontree remaneant integrè in Foreſta villæ de Havering cum ſuis appendiciis Wanſteed, Leyton, Welcomeſtow, & Woodford. Et villæ de Stratford in Weſtham, Eſtham, Hyleford parva, Berking, & Dakenham, pro parte remanent extra Foreſtam, & pro parte remanent in Foreſta, prout ſuperius per metas & bundas pleniùs dividuntur, Et ſic eundo à prædicta diviſa de Markethorn ſemper per prædictum rivulum uſque ad domum Roberti le Tanour de Naſtock in Hundred' de Aungre, & ab illa domo uſque ad meſuagium Willielmi filii Hugonis de Naſtock: Et ſic deinde ad Heſiam, directe ſicut itur ad domum Edmundi de Naſtock; Et ab illa Heſia uſque ad meſuagiam quoddam Henrici de Wickham

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de eadem, & ab illo meſuagio uſque ad quendam locum vocatum Frithſtigele in eadem, & ab illo loco uſque ad terram Johannis de Stodley, & ab illa terra uſque ad Ripam Talliatam, & ſic ſemper per eandem Ripam uſque ad pontem vocatum Pyſſingfordbregge per mediam Ripam: Et a dicto ponte per mediam Ripam uſque ad quendam pontem vocatum Affebregge, & ab illo ponte eundo directè uſque ad Eccleſiam de Theydonboys, & ab eadem Eccleſia uſque ad meſuagium Johannis de Ruſſelep ex oppoſito meſuagio Rectoris Eccleſiæ de Theydonboys: Et ab illo loco retornando per coſteram Boſci dicti Rectoris, & Gilberti de Theyden, uſque ad meſuagium ejuſdem Gilberti, & à dicto meſuagio aliàs retornando per Hayam dicti Gilberti, uſque ad meſuagium Johannis Sprige: Et ſic ab illo meſuagio per venellam jacentem ante meſuagium prædictum vocatum Sprigeſlane, uſque ad domum Rogeri Atteffrythe: Et ab illa domo directè ad domum Willielmi le Gardener in eadem villa ſitam ſuper coſteram de Eppinghath, & ab illa domo retornando per diviſam, quæ dividit dimidium Hundred' de Waltham, & Hundred' de Aungre, directè uſque ad caput Boſci vocatum vetus Wintered: Et ab illo Boſco per Regiam viam quæ eſt diviſa prædictorum Hundred' de Aungre & Waltham, extendentem ad Boſcum vocatum Gernonneſwood in villa de Theydon-Garnon: Et ab illo Boſco uſque ad quercum vocatam Markooke quæ eſt diviſa inter terras Abbatis de Waltham, & Roberti filii Walteri, & Willielmi Gernon: Et ſic retornando per regiam viam, quæ extendit inter terras prædictorum Abbatis de Waltham, & Roberti filii Walteri, directè uſque ad locum vocatum Reodegate in villa de Welde, & ſic in Hundred' de Aungre, remanent integrè in Foreſta, villæ de Loketon, Chigewell, Lamborn, & Stapleford Abbatis: Et villæ de Naſtock & Theydonboys, pro parte, remanent in Foreſta, & pro parte extra Foreſtam, prout ſuperiùs per metas & bundas pleniùs dividuntur:

tur: Et omnes reſiduæ villæ in Hundred' de Aungre prædicto debent remanere extra Foreſtam: Totum dimid' hundred' de Waltham remanet integre in Foreſta, nihil excipitur: Totum dimid' Hundred' de Harlaw remanet extra Foreſtam, præter villatam de Hatfield Regis cum ſuis appendiciis, quæ integrè remanet in Foreſta, eo quod eſt de antiquo dominico Domini Regis, ſimul cum Hamletto vocato la Walle, & Boſco vocato Monkenwood cum ſuis pertinentiis: Totum Hundred' de Chelmsford remanet extra Foreſtam, præter villatam de Writtel, quæ integrè remanet in Foreſta cum ſuis appendiciis, eo quod eſt de antiquo dominico Domini Regis: Item incipiendum eſt apud Coleceſt' ad pontem vocatum Northbregge, eundo per Regiam viam ducentem ad quandam crucem vocatam Mylandecronche, ſitam ſuper caput cujuſdam Breueræ vocatum Kingeſwodeheth, & ſic deinde ante meſuagium Ric. Martin, uſque ad quandam Heſiam ante meſuagium W. Warin de Coleceſt', & ſic eundo per foſſatum dictæ Brueræ uſq; ad quandam pltaeam vocat' Kingeſwodhach, quæ eſt diviſa inter villam de Horkeley & Kingeſwodheth: Et ſic directè per foſſatum Phi. Attehache uſq; ad meſuagium W. le Herd de Horkeley quondam Edm. Attehache, & ſic per quoddam foſſatum extendens inter Horkeley & Kingeſwood uſq; ad quandam diviſam, quæ dividit villam de Horkeley Bexſted & Kingeſwod: Et ab illa diviſa per quoddam foſſatum, quæ dividit Bexſted & Kingeſwod, uſq; ad quandam aliam diviſam quæ dividit Boſcum Rad. de Bexſted & Boſcum, J. le Breton: Et ſic eundo per foſſatum quæ dividit Kingeſwod & Boſcum præd' J. le Breton uſq; ad foſſatum parci de Lengham: Et ſic per præd' foſſatum uſq; ad locum vocatum Kingeſwodebregge ad coſteram dicti parci, & ſic retornando per regiam viam, quæ ducit verſus Coleceſt', uſq; ad pontem vocatum Eſtbregge: Et à dicto ponte de Eſtbregge, uſq; ad quand' port' Coleceſt' vocat' Eſtgate cum tota præd' villa Coleceſt' infra muros cum omnibus dominicis

nicis Dom. Regis, ad caſtrum ſuum Coleceſt' ſpectantibus: Et ſic in hund' de Lexeden, remanet integrè in Foreſt', villa de Myland' cum Boſco de Kingeſwod cum ſuis appendiciis: Et dicunt etiam quæ Hund' de Weſtodeleford, Eſtodeleford, dimid' Hund' de Froſſchewel, & dimid' Hund' de C'avering ſunt integrè extra Foreſt', & fuerunt à tempore quo non extat memoria. Item dicunt quod Hund' de Dunmow, Hengeford, & Laxeden, ex parte Boreali de la Stanſtreet, quæ ducit de Storteford uſq; Coleceſt', ſunt extra Foreſt' de perquiſito Albricii quondam Com' Oxon. Item dicunt, quod id quod eſt ex parte Auſtrali de dicta Stanſtreet in præd' Hund' de Dunmow, Laxeden, & Hengeford, debet remanere extra Foreſt' præter id quod ſuperius nominatur in Hund' de Laxeden in villa de Coleceſt': Et præter villatam de Felſtede cum Boſco de Blakholehey cũ ſuis pertinentiis in Hund' de Hengeford, quod quidem manerium de Felſtede cum Boſco de Blakholehey præd' cum pertinentiis Abbatiſſa de Cadanio tenet de dono W. Regis Conqueſt' Angliæ, & tenere clamat adeò liberè, ſicut iidem manerium & Boſcus tenebantur tempore Ed. 2. Regis Angliæ; ſed nihilominùs dicimus quòd præd' manerium cum præd' Boſco cum ſuis appendiciis integre remanere debent in Foreſta. Item dicunt quod Hund' de Tendringe & Roeheford integrè ſunt extra Foreſtam, & fuerunt à tempore quo non extat memoria. Item dicunt quod Hundred' de Chafford, Berdeſtable, Danuſeye, & dimid' Hundred' de Wytham, dimid' Hund' de Thurſtaple, & dimid' Hund. de Weneſtr. totalitèr debent eſſe extra Foreſtam ſecùndum tenorem Magnæ Chartæ de Foreſta, eo quod afforeſtata fuerunt poſt Coronationem Dom. H. Regis Avi Dom. H. Regis patris Dom. Ed. Regis nunc, & per Reges R. & I. Quæ quidem perambulatio præſcripta adeo aperte & evidenter facta eſt, ſecundùm intellectum, & ſanas conſcientias noſtras, ut didicimus per Anteceſſores noſtros: Et Sacramentum proborum militum & virorum antiquorum fide dignorum

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nunc ſuperſiſtentium & præmeditantium propter diuturnitatem temporis elapſi, adeo long', cujuſcunq; alterius perambulationis in com. Eſſex factæ, & meliùs ac plenius ſuper perambulatione præd' deſideraremus certiorari tàm pro ſtatu dom. regis quam populi ſui, Si idem dominus rex evidentias aliquas apertas, ſi quas habuerit, nobis, ut cæteris de regno ſuo infra limites foreſtæ ſuæ exiſtentibus per conſilium ſuum in ultimo parliamento ſuo apud Weſt' promiſit & conceſſit, demandaſſe placuiſſet. In cujus rei teſtimonium, huic præſenti perambulationi, nos præd' Jur. ſigilla noſtra appoſuimus, Datum apud Chelmsford die & Anno ſupradictis: Ita quod, quicquid per iſtas perambulationes ponitur extra Foreſtam remaneat extra Foreſtam, & reſiduum remaneat Foreſta, ſecundùm metas & bundas præd' imperpetuum. *In cujus rei teſtimonium has literas noſtras fieri fecimus patentes. Teſte me ipſo apud Lincoln', quartodecimo die Februarii, Anno Regni noſtri viceſimo nono.*

Surrey.

Icy comence le proces de la puraley de Wiinſor, fait en le Countie de Surrey, au Parliament treſnoble ſeignior noſtre Seignior le Roy Edward. 3. apres le conqueſt, ſummon & tenus a Weſtm. lan de ſon Reigne primier.

Au quel parlemẽt, al complaint des Prelats, comites, Barons, & la cmmunaltie del Royalm, fait au Roy, que les purales, en temps treſhonorable Roy Edward aiel noſtre ſeignior le Roy Edward quorẽſt, grauntus & confirmes, ne furent mie gardes, & auſcuns puraleys en diuers forẽſts nient faites remiſtrent a faire en temps le Roy Edward piere noſtre ſeignior le Roy quorẽſt: noſtre ſeignior le Roy, a lour priere, graunts, que les puraleys debant faits, grauntes, & confirmes, deſore e abant fuiſſẽt tenus & gardes, Et que les purales, qui remiſtrẽt a faire, per ſes ſeaux & leaux a ceo aſſignes, fuiſſent faits a plus en haſte, come les porrent abonement faire, & come les fuiſſent faits, & en ſa Chauncellerie retornes, &

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per certaine bounds & metes, que les confirmeret per ſa Charter pur luy & pur ſes heires a garder & a tenir a touts jours: Et noſtre ſeignior le Roy, de ceſte ſa bon bolunte, en parlement fait & graunta en Cheſcun countie dengleterre ſa Charter a eux qui boylent ſure que meſtr. en abaunt: Per que la cõminaltie de countie de Surrey, qui ſe ſenti grebe en la dit foreſt de Windſor deins launds del dit countie de Surrey abant dit, ſui daboir la dit Charter noſtre ſeignior le Roy a ſeale, & aboyent, teſmonſant ſa bolunt' abantdit, come plus pleignement eſt contenus per exemplification de la dit charter la quel demoyt en labbe de Certeſey a garder.

Edwardus, dei gratiâ rex Angliæ, dominus Hiberniæ, & dux Aquitaniæ, omnibus ad quos præſentes literæ pervenerint, ſalutem: Sciatis, quòd, cum celebris memoriæ Dominus E. quondam rex Angliæ, Avus noſter, dudum fideles ſuos aſſign. ad perambulationes in Foreſtis ſuis, tam citra Trentam quam ultra, faciend', & poſtmodum quaſdam perambulationes in aliquibus Foreſtarum illarum ſub certis metis & bundis in eiſdem content', factas, & retornatas, per literas ſuas patentes pro ſe & hæred' ſuis conceſſiſſ. & confirmaſſet, cæteraque præcepiſſet per prædictas metas & bundas imperpetuum obſervari, perambulationibus hujuſmodi tempore dicti avi noſtri in aliquibus foreſtis remanentibus faciend', ac Dominus Ed. nuper Rex Angliæ pater noſter in parliamento ſuo nuper apud Lincoln. convocato ad ſupplicationem prelatorum, comit', baronum, & communitatis regni ſui, aſſerentium dictas perambulationes factas, obſervatas non fuiſſe juxta conceſſionem & confirmationem prædictas, Et perambulationes hujuſmodi alibi factas non fuiſſe, per literas ſuas patentes, quinto die Auguſti, Anno Regni ſui decimo, conceſſerit pro ſe & hæredibus ſuis, quòd perambulationes præd', per dictum avum noſtrum conceſſæ & confirmatæ, ſicut præd' eſt, ſub metis & bundis in dictis literis patentib. ipſius Avi noſtri

noſtri content' & ſpecificat', teneantur & imperpetuum obſervarentur, promittens quòd fideles ſuos ad perambulariones in foreſtis, in quibus tunc factæ non fuerunt, faciend' aſſignari faceret: Ita quòd perambulationes illæ fierent ante feſtum Natalium Dom. tunc proximum futur', & quòd perambulationes illas, cum factæ fuiſſent, & retornatæ, per literas ſuas patentes, quas in eiſdem contigetit contineri, pro ſe & hæred' ſuis confirmaret, prout in his literis patent. ipſius patris noſtri ſuper hoc confectis plenius continetur: Ac etiam inſinuatione prelatorum, comit. baron', & totius cõmunitatis Regni noſtri in inſtanti parl'am. noſtro apud Weſt' convocato accepimus, quòd, tempore dicti patris noſtri, perambulationes præd' per dictum avum noſtrum, ut præmittitur, conceſſæ & confirmatæ, non fuerunt obſervatæ, & quòd perambulationes hujuſmodi non factæ, remanſerunt faciend', per quod nobis cum inſtantia ſupplicarunt, ut perambulationes, per dictum Avum noſtrum, ut præmittitur, eonceſſas & confirmatas, confirmare & ratificare velimus; Ac etiam perambulationes, quæ nondum factæ ſunt, fieri faceremus indilatè: Nos eorum ſupplicationi in hac parte favorabilit' annuentes, concedimus pro nobis & hæred' noſtris, quod perambulationes præd' per prefatum Avum noſtrum conceſſæ & confirmatæ, ſub metis & bundis in dictis literis ipſius Avi noſtri contentis & ſpecificatis, teneantur & imperpetuum obſerventur: Et volumus quòd perambulationes, quæ in aliquibus Foreſtis adhuc reſtant faciend', per fideles noſtros ad hoc aſſignand' fiant, ſub ea celeritate, qua fieri poterunt, bono modo: Quas quidem perambulationes, cum factæ fuerint & nobis retornatæ ſub metis & bundis quas in eiſdem inveniri contigerit, per literas noſtras patentes pro nobis & hæred' noſtris confirmari & approbari faciemus. In cujus rei teſtimonium, has literas noſtras fieri fecimus patentes. Teſte me ipſo apud Weſt' xxiii. die Martii, Anno Regni noſtri primo.

Per ipſum Regem & Conſ.

Puis

Puis apres, la dit communalty de countie de Surrey, que se lenty grebe, de ceo que la purale, ne fuit pas fait en la Forest de Windsor, en le dit countie de Surrey, en temps le Roy Edward aiel nostre seignior le Roy E. quorest, ne, en temps le Roy Edward son piere, ne uncore remist a faire, q Chibacher, la dit communaltie per bertue de la Charter nostre seigniour le Roy, come plus pleignement est contenus en la dit puraley qui ensuit.

Edwardus, dei gratia rex Angliæ, dominus Hiberniæ, & dux Aquit', dilectis & fidelibus suis, Tho. Tregorr. Johanni de Stonore, Johanni de Ifeld, & Johanni Dabnon, salutem: Sciatis, quòd, cum in parliamento nostro apud Westm. convocato, per Prelatos, Comites, Barones, & communitatem regni nostri, asserentes, quòd perambulationes tempore domini E. quondam regis Angliæ avi nostri, in Forestis suis tàm citra Trentam quàm ultra factæ, non fuerunt observatæ, nobis fuisset supplicatum, ut nos eas sic factas per dictum avum nostrum concessas & confirmatas, eandem concessionem & confirmationem in omnibus observari, & in forestis, ubi dictæ perambulationes remanent faciend', eas fieri, & factas in forma præd' confim. curaremus, assignavimus vos duos &, tres vestr', quorum vos prefat' I. de Stonore unum esse volumus, custod' forestæ nost. citra Trentam, vel ipsum quem posuerit loco suo, & omnes Forestar' de feodo, & Viridar. forestar' nost' in com. Surrey, ad perambulat' rectam per visum triũ vel duorum vestrum, quorum vos prefat. I. de Stonore unum esse volumus, & illorum in forestis nostris, in eodem in quibus dictæ perambulationes tempore dicti Avi nostri factæ non fuerunt, per Sacr. tam militum quam aliorum proborum & legalium hominum de eodem com', per quos rei veritas melius scir', & perambulationes illæ fieri poterunt, faciend', juxta tenorem Chartæ domini H. quondam regis Angliæ, proavi nostri, de Foresta: & ideo vobis mandamus, quòd ad

cert.

cert. dies & loca, quos vos tres, vel duo veſtrum, quorum nos præfat' J. de Stonore unum eſſe volumus, ad hoc providentes, præmiſſa faciatis in forma præd', Ita quod perambulationes præd' fiant & nobis retornentur citra feſtum Natalis Domini proximo futurum: Mandavimus enim vic. noſtro com. præd' quod ad certos dies & loca, quos vos tres vel duo veſtr', quorum vos prefat. J. de Stonore unum eſſe volum. ei ſcire faciatis, venire faciat coram vobis tribus, vel duobus veſtrum, quorum vos præfatum Johan. de Stonore unum eſſe volumus, tot & tales, tam milites, quam alios probos & legales homines de com. præd', per quos rei veritas melius ſciri, &, perambulaciones præd' fieri poterint, ſicut prædictum eſt, Et perambulationem illam diſtinctè & apertè ſic factam, nobis ſub ſigillis veſtris, trium, vel duorum veſtr. quorum vos præfat' Johannem de Stonore unum eſſe volumus, & ſigillis eorum, per quos factæ fuerint, reportetis ante feſtum ſupradictum, ut eam confirmemus juxta conceſſionem noſtram dictis magnatibus inde factam. In cujus rei teſtimonium, has literas noſtras fieri fecimus patentes: Teſte me ipſo apud Weſtm. 20. die Martii, Anno regni noſtri primo.

Per ipſum Regem & Conſ.

Et pur ceo que la dit Commiſſion ent ſait mention, que le vic. de Surrey ſeit venir, devant les Juſtices a certain jour & lieu per eux aſſignes, bones & loyaux Chivalers & autres del dit countie pur la dit purale faire, noſtre ſeignior le Roy, hors de ſa Chauncellery maunda ſon briefe al dit viſcount de Surkey, en garrane de la dit Choſe faire come plus pleinement eſt contenus en la dit briefe, que enſuit.

Edwardus, dei gratia rex Angliæ, dominus Hiberniæ, & dux Aquit', vicec. Surrey Salut': Sciatis, quòd cum in parliamento noſtro nuper apud Weſt' convocato, per prefatos comites, Barones, & communitatem regni noſtri aſſerentes, quòd perambulationes tempore domini E. quon-

dam regis Angliæ, avi noſtri, in Foreſtis ſuis tam citra Trentam quàm ultra factæ, non fuerunt obſervatæ, nobis fuiſſet ſupplicatum, ut nos eas ſic factas per dictum avum noſtrum conceſſas & confirmatàs, juxta eaſdem conceſſionem & confirmationem in omnibus obſervari, & in foreſtis, ubi dictæ perambulationes remanent faciend', eas fieri, & factas in forma præd' confirm. curaremus, aſſignavimus dilectos & fideles noſtros Tho. Tregorr', Johannem de Stonore, Johannem de Iſeld, Johannem Dabnon, tres vel duos eorum, quor. prefat' Johannem de Stonore unum eſſe volumus, ad convocand' in præſentia eorund' Tho. Johannis, & Johannis, trium vel duor' eorum, quor. prefat' Johannem de Stonore unum eſſe volum', cuſtod' foreſtæ noſtræ citra Trentam, vel ipſum quem poſuerit loco ſuo, & omnes foreſtar. de feodo, & viridar. foreſt' noſtrar. in com. Surrey, ad perambulat' rectam, per viſum eor. vel duor. eor. quor. prefatum Johannem de Stonore unum eſſe volumus, in foreſtis noſtris in com. præd', in quibus perambulat' temp. dicti avi noſtri fact' non fuerunt, per ſacram. tam milit. quam alior. probor. & legalium hominum de com. tuo, per quos rei veritas melius ſciri, & perambulat' illæ fieri poterint, faciend' juxta tenorem Chartæ dom. Henrici quondam regis Angliæ, proavi noſtri, de Foreſta: Et ideò tibi præcipimus, quòd ad certos dies & loca, quos iidem Thomas, Johannes, Johannes, & Johannes, tres vel duo eorum, quorum Johannem de Stonore unum eſſe volumus, tibi ſciri faciant, venire facias coram eis, tribus, vel duobus eorum, quorum præfatum Johannem de Stonore unum eſſe volumus, tot, & itales, tam milites, quam alios probos & legales homines de com. prædict', per quos rei veritas melius ſciri, & perambulat'ones præd' fieri poterint, ſicut prædictum eſt, & habeas ibi hoc breve. Teſte me ipſo apud Weſtm. 20. die Martii, Anno regni noſtri primo.

Per ipſum Regem & Conſ.

Et pur ceo que la dit Commiſſion voloit, que les Juſtices

ſtices noſtre ſeignior le Roy facent appeller a eux, le gardein de la Foreſt citra Trent, ou ſon Lieutenant, a la purale faire dyoiturelment, per vertue de ceo Commiſſion les dits Juſtices maunderont lour briefe au dit gardeine, ou a ſon Lieutenant, quils ſuiſſent a certeine jour e lieu, ou le dit breve limit, enſemblement obeiſqz eux, a la dit choſe faire, ſolonpz ceo que plus pleignement eſt contenus en le dit briefe, que enſuit.

Thomas Tregorr', Johannes de Stonore, Johannes de Iſeld, & Johannes Dabnon, cuſtod' foreſtæ dom. noſtri Regis citra Trentam, & ejus locum tenem' in Com. Surrey, ſalutem, cum in Parliamento dom. noſt' Regis nuper apud Weſt' convocat', per prælatos, Comites, Barones, & communitatem regni, aſſerentes quòd perambulationes tempore dicti Edw. quondam Regis Angliæ, avi ſui, in foreſtis ſuis, tam citra Trentam quam ultra factæ, non fuerunt obſervat': Et eidem domino Regi ſupplicatum fuiſſet, ut ipſe eas ſic factas per dictum avum ſuum conceſſas & confirmatas, juxta eaſdem conceſſionem & confirmationem in omnibus obſervari, & in foreſtis, ubi dictæ perambulationes remanent faciend', eas fieri, & factas in forma prædicta confirmari curaret: Idem dominus noſter rex aſſignavit nos, tres & duos noſtrum, quorum Johannem de Stonore unum eſſe vult, ad convocand' in præſentia noſtrum, trium, vel duorum noſtrum, quorum Johannem de Stonore, unum eſſe vult, cuſtoſtem foreſtæ ſuæ citra Trentam, vel ipſum quem poſuerit loco ſuo, & omnes foreſtarum de feodo, & viridarios foreſtarum ſuarum in dicto Com. Surr', ad perambulationem rectam per viſum noſtrum, trium, vel duorum noſtrum, quorum Johannem de Stonore unum eſſe vult, & illorum in foreſtis ſuis in eodem Com. in quibus perambulationes tempore dicti avi ſui factæ non fuerunt, per ſacramentum tam militum quam aliorum probor' & legalium hominum de eodem Com', per quos rei veritas melius ſciri, & perambulationes illæ fieri poterint, faciend' juxta te-

norem Chartæ domini H. quondam Regis Angliæ, proavi ſui, de Foreſta: Et quia dominus Rex nobis mandavit, quòd convocari fac' cuſtodem Foreſtæ ſuæ citra Trentam, vel ipſum quem loco ſuo poſuerit in dict' Com. Surrey, ad perambulat' rectam faciend', nos pretextu illius mandati aſſignavimus diem eſſendi apud Certeſiam, die Lunæ proximo poſt quindenam ſancti Johannis Baptiſtæ, ad incipiend' de negotio ſupradict', ac perficiendum exinde ad dictam perambulationem faciendam quem diem; vobis aſſignavimus, ut vos ad diem prædictum ibidem perſonaliter interſitis, vel ipſe quem loco veſtro poſueritis, ibidem interſit, Ita quòd dicta perambulatio per viſum veſtrum, noſtrum, & aliorum ad hoc ſumm', rectè fieri poſſit, ſecundùm tenorem Chartæ domini H. quondam Regis Angliæ proavi domini Regis, de foreſta.

Et ainſi pur ceo que la Commiſſion purport, que les Forẽſters de fee, & les berderoꝛs de la Forẽſt abauntdit, en la Counte de Surr', a la dit puraley faire, fuiſſent al jour lieu aſſign', les dits Juſtices maunderent bꝛieſe de garniſhment as dits miniſters, quil fuiſſent illonqꝛs, & que eux feiſſent garnir les reſiantes deins la Forẽſt abauntdit en le dit Countie, en la quel puraley, en temps le Roy Edward aiel noſtre ſeignioꝛ le Roy Edward quoꝛeſt, ne fuit pas fait, ne chibache, ne quils fuiſſent illock a jour & lieu a Chibacher, & a ſeir dꝛeit & leiſe puraley come appeirt en le bꝛieſe, que enſuit.

Thomas Tregorr', Johannes de Stonore, Johannes de Iſeld, & Johannes Dabnon, dilectis ſibi foreſtarum de feodo, & viridar' foreſtæ dom. noſtri regis in Com. Surr', ſalutem, cum in Parliamento dom. regis apud Weſt' convocat', per prælatos, Comites, Barones, & communitatem regni, aſſerent', quòd perambulationes tempore dom. Ed. nuper regis Angliæ avi ſui, in foreſtis ſuis tàm citra Trentam quàm ultra factæ, non fuerunt obſervat', eidem domino ſupplicatum fuiſſet, ut ipſe eas ſic factas per dictum avum ſuum conceſſas

ceſſas & confirmatas, juxta eaſdem conceſſionem & confirmationem in omnib. obſervari, & In foreſtis, ubi dictæ perambulat' remanent faciend', eas fieri, & factas in forma præd' confirmari curaret; Idem dom. noſter rex aſſignavit nos, tres vel duos, quorum Johannem de Stonore unum eſſe vult, ad convocand. in præſentia noſtra, trium, vel duorum noſtrum, quorum Johannem de Stonore unum eſſe vult, cuſtodem foreſtæ ſuæ citra Trentam, vel ipſum quem poſuerit loco ſuo, & omnes foreſtar. de feodo, & viridarios foreſtar. ſuarum in dicto Com. Surrey, ad perambulat' rectam per viſum noſtrum, trium, vel duorum noſtrū, quor. Johannem de Stonore unum eſſe vult, & illorum in foreſtis ſuis in eodem Com. in quibus perambulat' dicti avi ſui factæ non fuerunt, per ſacrament. tam militum quam aliorum proborū & legalium hominum de eodem Com. per quos rei veritas melius ſciri, & perambulat' illæ fieri poterunt, faciend' juxta tenorem Chartæ dom. H. quond. regis Angliæ, proavi ſui, de Foreſta; & quia dom. noſter Rex nobis mandavit, quod convocari faceremus omnes foreſtar. de feodo, & viridar. foreſtar. ſuar. in dicto Com. ac etiam illos in foreſtis ſuis in eodē Com. in quib. perambulat' tempore dictæ avi ſui factæ non fuerunt, ad perambulat' rectā faciend', vobis mandamus ex parte dom'ni noſtri regis, quòd apud Certeſiam, die Lunæ proximo poſt quindenā S. Johan. Baptiſtæ, perſonaliter interſitis, ad perficiend' exinde perābulat' illā fac' ēd', ac etiam præmunire fac' oēs illos in foreſtis dom. regis in eodē com. cōmorantes, in quib. perābulat' tēpore dicti avi ſui factæ non fuerunt, quod tunc ſint ibi ad diē præd' exinde perficiend' nobiſcum, ut perambulat' illæ per viſum illorum, noſtrum, & veſtrum, fieri poſſet competentèr.

Et fait a ſcaboir, quod a dit jour aſſeſſe a Certeſey, touts les Juſtices, & le dic. de Surr', le Lieutenant, le gardein de la foreſt citra Trent', foreſters, berderers, & āters reſeants deins le bound de la foreſt, & bone gents & loiaux chivalers, & autres illōques ſum. per le dit viſcount, bien-

dzent: q les Just. feissent lour office, q pristrēt enquest de Chivalers q auters, cest est ascavoir Mont. Hen. Hast', q H. de Montfozth Chivalers, Rob. le Dol, Hen. de Sunnerhus, Will. Huse, John de Wures seisne, Nichol Bachiler, John Prodhoame, W. de Pozhle, John at Stoket, Robert de Dittone, John de Kingsnode, q les chargerent la dit enquest solonigz lour Commission.

Et per Monsieur J. de Swinerton chivaler Lieutenant le gardein de la Fozest nostre seignioz le roy citra Trent, per certeine Commission a luy fait illoek monstre, allegea illoek devaunt les Jurozs de la enquest pur le Roy, qui luy aboit un enquest prise a Lampheth, devant certeine Justices en temps le roy Edward aiel nostre seignioz le roy quozest, testmoignant que cel lieu, le quel il furent entour de faire puraley, a cel temps remist sozest per icel enquest, q pria as Jurozs, quil fuissent abiles pur le Roy de cel inquest, quil mist avant en evidence pur le Roy, come appeirt per la copie de la dit enquest, qui ensuit.

Perambulatio facta in Com. Surrey de foresta de Windf. die sabbati proximo post festum S. Gregorii P. An. regni regis E. 1. 8. apud Lāpheth, corā Rogero Brainson, Johanne de Barwick, Radulpho de Hengham, Will. Inge, & Johanne de Crokesse, in præsentia Phi. de Say Cleric' Justic' foresta, forestar. viridar' foresta prædicta, per Sacram. Will. Anubesas', Johannis de Bourstow, Will. de Bekewete milit. Rob. de Dol, Rob. de Valeton, Will. de Northwood, Johannis Prodhome, Rob. Attesond, Michael. de Wistone, Rich. de Horton, Edmundi de Suteworth, & Johnnis de Farnham, Qui dicunt per sacram. suum, quod totus com. Surrey fuit foresta tēpore H. Regis proavi Regis nunc, unde idem Henricus obiit seisitus, & ita remansit foresta usque ad quartum diem Decembris, Anno regni regis Rich. 1. Qui tunc deforestavit quandam partem ipsius comitatus per certas metas, quæ continentur in Charta ipsius regis

gis inde facta, viz. inter Kanciam, & Aquam quæ dicitur Waye, & de monte de Guldedone, quantum Com. Surrey durat verſus Meridiem & reſiduum Com. prædicti, ſcilicet, incipiend. ad aquam de Waye per montem de Guldedone, quantum com. durat verſus Aquilonem, remanſit & eſt foreſta, & poſt illius Chartæ confect. nihil aforeſtatum vel occupatum fuit per ipſum regem Rich. nec per regem Johannem, nec per aliquem alium: dicunt etiam, quòd non ſciunt, quòd aliquid de com. præd. afforeſtatum fuit per prædict. Hen. proavum regis nunc. In cujus rei Teſtim. præd. Jurat. ſigilla ſua appoſuer.

Et la Communaltie allegea en ebidence pur eux enconter le Roy, que la puraley fuit fait en le dit Countie, en le temps le Roy Hen. befael le Roy que oze eſt, iſſint que tout le Countie de Surrey fuit diſafforeſt, e de ceo miſtient abant un copie de un enqueſt de la dit puraley fait en la manner, que enſuit.

Perambulatio facta in Com. Surrey per ſacram. Johan. de Waltone, Gilberti Dabnour, Gilberti de Abingworth, Nic. Malemeyns, Hamonis de Gatton, Rob. de Watenill, Tho. de Hurtmere, Walteri Outworth, Will. de Wanton, Will. de Inſula, Johannis de Mikelham, & Johan. de Burſtowne, Qui dicunt, apud Brudford ſunt diviſæ inter Bark. South. & Surrey, & tunc diviſæ inter Berk. & Surr. de Brudeford per viam quæ ducit de Fremeley apud Wiſhemere, & poſtea per crucem Rad. uſque Gomerichford per medium le Shete uſque ad Horton, & de Horton per la Lee verſus curſum aquæ, & inde juxta aquam quæ dicitur Sydeway, uſque ad Thornehul, de Thornehul uſque ad Harpesford, de Harpesford per aquam uſque ad Juggfeld, & de Juggfeld uſq; Lodertakehucche, ubi tres com. conveniunt, viz. Surrey, Bark & Buck. Et ſic dicunt quòd totus com. Surrey fuit extra foreſtam, ſicut diviſæ content. Suth. Berk. & Surrey condonant die quo dominus Hen. filius R. Johannis fuit Coronatus.

Dauter parte le Communaltie miſt auant pur eux en ebidence, un copie de un Charter fait per un abbe Alein, iadis Abbe de Certeſey, e cobent de meſme le lieu, al Roy Hen. Weſael noſtre ſeignior le Roy quozeſt, que les dits Abbe e cobent granteront certeines terres al Roy Hen. eſtre deins bound de fozeſt, nient areſteant la puraley auant fait per le dit Roy Hen. come plus pleignement appeirt per la copie de la dit Charter, que enſuit.

Omnibus ad quos præſens ſcriptum pervenerit, Alanus abbas de Cherteſey, & ejuſdem loci conventus, ſalutem æternam in Domino: Noveritis nos conceſſiſſe, quòd, non obſtante perambulatione facta per præceptum domini Henrici illuſtris Regis Angliæ, filii Regis Johannis, de foreſta de Windſor in Com. Surrey, omnes terræ & Boſci, & omnia tenementa contenta infra metas & diviſas ſubſcriptas, remaneant ipſi domino Regi & Hered. ſuis, Foreſta imperpetuum, viz. a ponte de Stanes per regium chiminum, ſicut ſe extendit per mediam villam de Egeham uſque Harpesford, & de Harpesford uſq; la Knapp, & de la Knapp uſq; Loderlakeſhack, ubi cadit in aquam Tamiſiæ, Ita quod omnes terræ & Boſci, & omnia tenementa, infra metas præd. & cẽs homines manentes infra eaſdem metas, ex conceſſione ipſius dom. regis erunt quieti de regardo, ſalva ipſi dom. regi venatione ſua. In cujus rei Teſtimonium, præſenti ſcripto ſigill. noſtrum duximus apponendum, hiis teſtibus domino S. Cantuarienſ. archiepiſcopo, domino E. London. I. Bathon. H. Lincoln, R. Sarum, R. Dunelm. Cancellar. domini regis, R. Ciceſtriæ, & W. Oxon. Epiſcopis: H. de Burgo Juſtic. domini R. Will. Mareſchall. Rad. fil. Nich. Godfr. de Grancombe, & multis aliis.

Et de ceo la Communaltie miſt copie de un teſtification de certeine Chibalozs teſmoignants ceo, que labbe Alien de Certeſey et ſon cobẽt abiet fait a Roy H. apres

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la dit plurale fait, come appeirt per la copie, que enſuit.

Omnibus, ad quos preſens ſcriptum pervenerit, Gilbert' de Abingworth, Rob. de Watervil, Wilh. de Inſula, Nich. Malemciens, Johannes de Milkenham, & Walter' de Cutteworth, ſalutem in dom. Noveritis nos interfuiſſe & audiviſſe, ubi Alanus Abbas de Certeſey, & ejuſdem loci cõvent', cõceſſerunt dom. noſtro H. illuſtri regi Angl. fil. regis Johannis, & chartã ſuam inde fecerunt, quòd, non obſtante perambulatione facta per preceptum ipſius dom. regis de foreſta de Windſor in com. Surr', oẽs terræ & boſci & omnia tenementa contenta infra metas, & diviſas ſubſcript', remaneant ipſi domino regi & hered' Foreſta imperpetuum, viz. à ponte de Stanes per regium Chim', ſicut ſe extendit per mediam villam de Egeham uſque Harpesford, & de Harpesford uſque la knapp, & de la knapp uſque Loderlake, ubi cadit in aquã Tamiſiæ; Ita quòd omnes terræ & Boſci & omnia tenementa infra metas pred' & omnes Homines manentes infra eaſdem metas, ex conceſſione ipſius regis, erunt quieti imperpetuum de Regardo, ſalva ibidem ipſi domino regi venetione ſua. In cujus rei teſtimonium præſenti ſcripto ſigilla noſtra duximus apponend', hiis Teſtibus, S. Cantuar' Archiepiſc. domino E. London, I. Bathon, H. Lincoln, Ro. Sarum, R. Dunelm. cancellar' domini Regis, R. Ciceſtren. & W. Exon, Epiſcopis, H. de Bnrgo Juſt' domini regis, Wil. Mareſchall, Rad', fil. Nich. Godfr. de Grandcombe, & multis aliis.

La quel puraley abaunt dit, chibache en le temps H. enſemblement oue la Charter & teſtification abaunt dit, furent en la treaſozie noſtre ſeigniour le Roy, & ceo la fuiſt la communaltie pzeſt a bouchẽ de recozd, ſi les Juſtices le Roy le voillent ſuffer: & les Jurours charges per lour ſerement adire beritie ſen alerent, & longe temps enſemble conſaileront entre eux, & rebiendzent, & firent lour ſerement en la maner que enſuit.

Qui dicunt per ſacram. ſuum, quòd tempore dicti Regis Edwardi Verdict.

Edwardi avi domini Regis nunc, nulla perambulatio facta fuit in Foreſtis com. de Surrey,& dicunt quòd perambulatio faciend' nunc in Foreſtis illis, inchoãda eſt apud Waymouth, & abinde ſemper in longitudine Tamiſiæ uſque Loderlakeſhache, ubi tres com. conveniunt, viz. Surrey, Berk, & Buck. & abinde uſque Orientalem corneam parci de Wyndſor', Et abinde uſque molendinum de Harpeſford, Et abinde uſque Thornhul, Et abinde uſque Sydway, Et abinde uſque La Lee, Et ſic uſque Horton, Et abinde per medium Laſhete uſque Gomerichesford, & abinde uſque Rolneſcrouch, & abinde uſque Wiſhemoredene, & abinde uſque Brudeford, ubi tres com. conveniũt, viz. Surr'Bark.& Suth.Et ſic dicunt quòd totus Com.Surr' eſt extra foreſtam, & fuit tempore regis H. proavi dom. regis nunc, ſicut pater per quandam perambulationẽ factam tempore ejuſdem Regis H. ſecundùm tenorem Chartæ Regis H. de foreſta : dicunt etiam, quòd,tempore Regis Edwardi avi dicti regis nunc, quædam inquiſitio capta fuit apud Lampeth, coram Rogero Gravaſon, Johanne de Berewike, Radolpho de Hengham, Wil. Juge & Joh. de Crokeſſe,per procurationem dom. Hug. le Deſpenſ. ſenioris hominib' com.præd' non præmunitis,except' quibuſdã perſonis in inquiſitione illa exiſten', vi & metu ejuſdem Hugonis ad hoc ductis, ad bundas & metas in Foreſtis com. pred' faciend', qui nullam perambulationem nec equitationem in Foreſtis illis fecerunt, nec bundas nec metas in eiſdem poſuerunt. In cujus rei teſtimonium,&c.

Et pur ceo que ceſt enqueſt fuit mis abaunt le dit jour en evidence pur le Roy encounter la Communaltie, e ceo la trobe per ceſt enqueſt abaunt dit, les Juſtices ne eſoient aler abaunt, e chibacher la dit puraley, ſolongne les bounds fait per les Jurozs, ſans eſtre meints abiſes ou counſailes oue noſtre ſeigniour le roy,mes aſſignerent jour ouſtre a Lieutenant le gardein de la fozeſt de ceo Trent,as Verderozs de la Fozeſt,as Jurozs de lenqueſt,

queſt, & as auters reſceants deins bounds de Foreſt illock eſtant, noſmement le Lundie en la feaſt ſeint Matthew procheine enſuant, a Weymuth, & quils fuiſſent illock al dit jour, & al meſ. temps les Juſtices ſe voilent aviſer: a quel jour touts les Juſtices, &c. Sir Tho. Tregoz vindzent, & les verderoz, & les Juroz de la enqueſt, & touts les reſceants deins bound de la Foreſt avaunt-dit, mes le gardein de la Foreſt de ceo Trent, ne ſon Lieutenant, ne nul de foreſters, & qui jour aboient per preſcription, ne vindzent point. Et al dit jour, la communaltie de Surrey miſt avaunt vzeſe noſtre ſeignior le Roy direct as Juſtices, que eux al aſſent avaunt a la puraley faire, nient arreſteant la enqueſt prſe en temps le Roy Edward, aiel noſtre ſeignior le Roy qui oze eſt, Et come les furent retourns en la Chancellarie, nient voillant noſtre ſeignioz le Roy, que execution de la dit puraley en ſoit fait, devaunt ceo lenqueſt fuiſſet retozne en Chaumcellarie, & illock venu la, un enqueſt & lautre que adonk, dzoit & reaſon ent ſoit fait per la counſeil noſtre Seignioz le Roy, come plus pleignement appiert per le bzief qui eſt appele non obſtante, qui enſuit.

Edwardus, Dei gratia, Rex Angliæ, dominus Hiberniæ, & dux Aquit', dilectis, & fidelibus ſuis, Thomæ Tregorr'; Johanni de Stonore, Johanni de Ifeld, & Johanni Dabnō, ſalutem: cum nuper ad proſecutionem prælatorum, comit' baronū, & communitatis Regni noſtri nuper nobis in parliamento noſtro apud Weſt' convocat' ſuggeren', perambulationes tempore domini Edwardi quondā R. Angliæ avi noſtri, in foreſtis ſuis, tam citra Trentam quam ultra factas, obſervatas non fuiſſe, & nobis ſupplicantium, ut nos eas per dictum avum noſtrum ſic factas, conceſſas, & confirmatas, juxta eaſdem conceſſiones & confirmationes obſervari, et in foreſtis ubi dict' perambulationes rem' faciend', eas fieri, & factas in forma predicta confirmari curaremus, aſſignavimus vos tres & duos veſtrum, quorum prefat' Johan'

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de Stonore unum esse volumus,ad convocand' in presentia vestra trium vel duorum vestrum, quarum prefat' Johannē de Stonore unum esse volumus, custodem forestæ nostræ ultra Trentam, vel ipsum quē ponere vellet loco suo, Et omnes forestar. de feod', & viridar. forestar. nostr. in com. Surrey ad perambulationē rectam per visum vestrum, triū vel duorum vestrum, quorum vos prefat. J. de Stonore unum esse volumus, & ill' in forestis nostris in eodem com. in quibus perambulat. tempore dicti avi nostri factæ non fuer', per sacram. tam militum quam aliorum probor. & leg' hominum de eodem com', per quos rei veritas meliùs sciri, & perambulation. illæ fieri possunt, faciend. juxta tenorem Chartæ domini H. quondam regis Angliæ,proavi nostri, de foresť : Et vobis mandamus, quod ad certos dies & loca,quòd vos tres vel duo vestrū, quorum vos præfat. J. de Stonore unum esse volumus, ad hoc provideriis, præmissa faciatis in forma prædicta, ita quòd perambulationes illæ prædict' fierent, & nobis retorn', citra festum Nativitatis Domini,prout in literis vestris patent. inde vobis confect' pleniùs continetur : Ac etiam ex parte cōmunitatis com. predict. accepimus,quòd licet vos inquisit' super metis & bundis forestar' in eom. predicto, pretextu assignat. nostræ predict. feceritis, perambulationes tamen juxta metas & bundas in inquisit. illa contētas, prætextu quarundā inquisit. tempore dicti avi nostri de hujusmodi metis & bundis factar', ut dicitur, hucusque facere distuliſtis, & nobis sit supplicatum, ut super hoc remedium apponamus : Nos ea quæ in dicto parliamento nostro sic concessa fuerunt, volentes executioni debitæ demandari, vobis mandamus, quòd perambulationes in forestis nostris in com. prædicto, juxta formam assign. nostræ præd. cum celeritate qua poteritis faciatis. inquisit. tempore dicti avi nostri inde, ut dicitur, factis non obstantibus, & easdē perambulationes sic factas, ad terminū pred', in Cancellaria nostra juxta formam assign. nostræ supradictæ retorn.

Nolumus

faciend' executione demandentur, antequam in cancelar' noſtra nobis retornarent', & viſis inquiſit', tempore dicti Avi noſtri ſic capt', ulter' inde fiat, quòd de conſilio noſtro rationabiliter fore videbimus faciend'. Teſte meipſo apud Stanhope, prim. die Aug. An. Reg. noſtri primo.

Per vertue de quel breiſe, les Verderers de la Forẽſt del County abantdit, les Jurors de l'enqueſt, & autres deins bound de Forẽſt reſceants, per lieu des Juſtices noſtre ſeignior le Roy, ſans aveir Regard al abſence le gardeine de la Forẽſt citra Trent, ou de ſon Lieutenant, que ne poient viendront al dit jour a eux aſſigne, alerunt abant a la puraley fair mes le jour de l'une de en la feaſt S. Matthew abantdit, en la manner, que enſuit.

Videlicet, Quòd de Weymouth in longitudine Tamiſiæ uſq; Stanesbridge: Et abinde in longitud' Tamiſiæ uſq; ad Loderſhach, ubi tres Com. conveniunt Surr. Berk. & Buck. Et abinde dimittendo Com. Berk. à dextra parte uſq; Stonihuldwel, & abinde uſq; les Quelmes, & abinde uſq; Orientalem corneram parci de Windſor', & ſemper in longitud' palatii ejuſdem parci uſq; ad molendinum de Harpeſford: Et abinde per eundem palatium uſq; Auſtralem portam ejuſdem parci, & abinde tranſmeando regiam viam uſq; Wyndwygſhul: Et abinde uſq; interiorem portam de Bromhal: Et abinde uſq; Thornhul: Et abinde per viam quæ dicitur Sydway, in longitudine ejuſdem viæ, & abinde uſq; la Lee: Et ſic uſq; Horton, & abinde per medium la Shète per Gomericheford, quæ in antiquo tempore vocatur Bachetesford.

Et nient plus Chibacherunt ad dit jour, eins demorerent a Bachete mes la nut: Lendemain, le mardie enſuiant, chibacherent abant de Gomerichefoꝛd, Et abinde uſq; Rolueſcrouch: Et abinde declinando in dextra parte uſq; Wyſhmorſden, & abinde uſq; Brudefordesbrigge ubi tres Com. conveniunt, viz. Surrey, Berk. South. Et les abantdit Juſtices, en divers lieux en la dit chibache, firent

rent la proclamation solemnement, que nul de sist cy hardie de chacer ou mal faire en le forest abantdit per reason de icel chibachy, tant il suit retorn a le Chancery e puis confirme per le Roy e son councel. Puis apres les Justices faissent lour record' de quant ils aboient fait de jour en auter, Solonque le tenure de lour commission a eux grante a commencement, e ceo la returnerent desoubs lour seales, en le chancerie nostre seignior le Roy, longe temps debaunt le jour a eux done de return pur lour commisson, e la manner, come il returnerent appiert per la copie del' dit record, que ensuit.

Perambulatio Forestæ Comitatus Surrey, juxta metas & bundas per inquisitionem captam coram Thoma Tregorr', J. de Stonore, & Jo. de Ifeld, & Jo. Dabnon, ad perambulationem illam factam assignat', Anno Regni Regis Edwardi tertii à Gonqueſt' primo, postea per visum præd' Jo. de Stonore, Jo. de Ifeld, & Jo. Dabnon.

Dominus Rex mandavit Tho. Tregorr', Jo. de Stonore, Jo. de Ifeld, & Jo. Dabnon, breve suum in hæc verba.

Edwardus, Dei gratia, Rex Angliæ, dominus Hiberniæ, & dux Aquit', dilectis, & fidelibus suis, Thomæ Tregorr'; Johanni de Stonore, Johanni de Ifeld, & Johanni Dabnō, salutem: Sciatis quòd, cum in Parliam' nostro nuper apud Westt' Convocat. per Prelatos, Comites, Barones, & Communitatem Regni nostri, asserentes, quòd perambulationes tempore domini Ed. quondam Regis Angliæ, avi nostri, in forestis suis, tam citra Trentam quam ultra factæ, non fuerunt observat' nobis fuisset supplicatum, ut nos eas sic factas per dictum Avum nostrum concessas, & confirmatas, juxta easdem concessionem & confirmationem in omnibus observari: Et in forestis ubi dictæ perambulationes remanent faciend', eas fieri, & factas in forma predict' confirmari curaremus, assignavimus vos, tres, & duos vestrum, quorum vos prefatum Johannem de Stonore unum esse volumus, ad convocand' in præsentia vestra, trium vel duorum vestrum, quorum

quorum vos præfat' Johannem de Stonore unum eſſe volumus, cuſtodem foreſtæ noſtræ citra Trentam, vel ipſum quem poſuerit loco ſuo, & omnes Foreſtar' de feodo, & Viridarios foreſtarum noſtrarum in Com. Surrey, ad perambulationem rectam per viſum veſtrum, trium vel duorum veſtrum, quorum vos præfat' Johannem de Stonore unum eſſe volumus, & illorum in foreſtis noſtr's, in eodem Com', in quibus perambulat' dicti Avi noſtri factæ non fuerunt, per Sacr. tam militum quam aliorum proborum & legalium hominum de eodem com', per quos rei veritas melius ſcir', & perambulationes illæ fieri poterunt, faciend', juxta tenorem Chartæ domini H. quondam regis Angliæ, proavi noſtri, de Foreſta: & ideo vobis mandamus, quòd ad certos dies & loca, quos vos, tres vel duo veſtr', quorum vos prefat' J. de Stonore unum eſſe volumus, ad hoc providerit' prem' faciat' in forma præd', ita quòd perambulat' præd' fiant, & nobis retorn', citra Feſt' Nat' Dom' prox' futur'. Mandamus enim vicec' noſtr' Com' præd', quòd ad certos dies & loca quos vos, tres vel duo veſtr', quorum vos præfat' Johannem de Stonore unum eſſe volumus, ei ſciri faciatis, venire faciat coram vobis, tribus vel duobus veſtrum, quorum vos præfat' Johannem de Stonore unum eſſe volumus, tot & tales, tam milites, quam alios probos & legales homines de Com. præd. per quos rei veritas meliùs ſciri, & perambulationes præd' fieri poterunt, ſicut prædictum eſt, & perambulationem illam diſtinctè & aperte ſic factam, nobis ſub ſigillis veſtris, trium vel duorum veſtrum, quorum prefatum Johannem de Stonore unum eſſe volumus, & ſigillis eorum, per quos factæ fuerint, reportetis ante feſtum ſupradictum, ut eam confirmemus juxta conceſſionem noſtram dictis magnatibus inde factam. *In cujus rei teſtimonium has literas noſtras fieri fecimus patentes. Teſte meipſo apud Weſtm' primo die Martii, Anno Regni noſtri primo.*

Pretextu cujus Brevis, præfati Thom. & ſocii ſui mandaverunt vicec. Surrey, quòd venire faceret coram eis, tribus vel duobus

obus eorum, apud Curteseyam, die Lunæ proximo post quindenam Sancti Johannis Baptistæ, quatuor & viginti tam milites quam alios probos & legales homines de Comitatu præd', per quos rei veritas melius sciri, & perambulationes fieri poterint secundùm formam brevis prædict'. Et similiter significaverunt custod' Forestæ citra Trentam: Et omnibus Forestariis de feodo & Viridariis Forestarum Comitatus præd. diem præd. mandantes quòd idem custos, vel alius quem loco suo ponere voluerit, nec non Viridarii & Forestarii ex parte Domini Regis tunc interessent ibidem, & iidem Viridarii præmuniri facerent illos in Forestis Comitat. præd. commorantes, in quibus perambul. tempore dicti Regis Avi, Domini Regis nunc, factæ non fuerunt, quòd ibidem similiter interessent ad perambulationem rectam faciend. in forma præd. Postea ad diem illum in præsentia præd. T. & sociorum suorum, Jo. de Swinerton miles, quem Thomas Wake custos Forestæ Dom. Regis citra Trentam per Literas suas Patentes loco suo posuit, venit; quas quidem literas idem Johannes prætendit ibidem, in hæc verba.

Warder of the Forests Deputy to the Lieutenant.

Thom. Wake, seignioz de Lidel, Justice de la Fozest citra Trent, a touts iceux que cest letter verront, salut. Saches, nous aboir ozdine e assigne nostre chival', e bon amie, monsieur J. de Swynerton, nostre Lieutenant per tout en les dits fozests, a fair touts choses qui appendant in nostre nome en icels parties, que nous mesmes ne poions entend': per quoy nous bous mandems e chargems de part nostre seignioz le Roy que al dit monsieur Jo. come a nostre Lieuten. en lez dits fozests, soies entendants e respoignants: en tesmoignance de quel chose al dit mons. Jo. nous abonus fait faire cestes nous literes pat. a durer a nostre bolunte, done a nostre manoir de Pynghe, le xj jour daberel, l'an de Reign nostre seignioz le Roy E. le tiers, apres la Conquest primier.

Et Henricus de Stogton, Galfr' at Donne, & Robertus de Immoworth, Viridar. Forestar. illarum veniunt, & testatum est

eſt per eoſdem Viridarios, quòd non eſt aliquis Foreſtarius de feodo in foreſtis prædict', alii tamen foreſtarii, qui non ſunt de feodo, ſcz. Robertus at Lake, & Robertus de Biſflete, & Thom. de Keneton, veniunt, & ſimilitèr alii in foreſtis prædictis commorantes, ſcz. Rowlandus de Wicford, R. de Trotteſworth, R. de Wike, W. de Withwel, Robertus de Certeſeye, Simon de Woodham, Thom. de Fremeleſworth, Thomas de Hamme, Henricus de Bergh, Williel. de Brudneſtone, Robertus de Kerſwell, Gilbertus de Withewel, Stephanus de Froilleburie, Robertus Myles, Thom. de Wonborne, Johannes de Watingford, Petrus Payne, Walter. at Church de Baſſeligh veniunt, & vicec. Surry venire fecit Henricum Huſe, & Henr. de Monte forti, milites, Robertum le Doll, Henricum de Somerburie, Willielmum Huſe, Johannem de Bures ſeniorem, Nicholaum de Bachilleu, Johannem Prodehome, Willielm. de Porkle, Johannem at Stoket, Robertum de Ditton, & Johan. de Kingeſnode, Jur'. Et poſtquam iidem jurati fuerunt ad veritatem ſuper præmiſſis dicendam, prædictus Johannes de Swinerton ſuggeſſit eiſdem Jurat. quòd tempore Regis E. Avi Dom. Regis nunc, capta fuit quædam inquiſit. de metis & bundis Foreſtar. Com. prædict. coram quibuſdam fidelibus ipſius R. ad inquiſit. illam capiend. aſſignat. quam inquiſit. idem Johannes aſſerit, ut intellexiſſet, in curia Domini Regis retornatam, & ab hoc requiſivit eoſdem Jurator'. quòd præd. inquiſitio latere non debuit, ex parte Domini Regis quòd ipſi in inquiſit. iſta de prædictis metis & bundis faciend. circumſpectè agerent, & porrex. quand. ſchedulam, formam illius inquiſitionis continentem: Et prædict. Jurator. habito inter eos diutino conſilio, dicunt per ſacram. ſuum, quòd tempore Regis E. Avi Domini Regis nunc, nulla perambul. facta fuit in Foreſtis Com. Surry, & dicunt quòd perambulat. faciend. nunc in Foreſtis illis inchoanda eſt apud Waymouth, & abinde ſemper in longitudine Tamiſiæ uſque Loderlakeſhache, ubi tres Com. conveniunt, *viz.* Surry, Berk.

et Buck. Et abinde uſque Orientalem cornerâm parci de de Windſor', Et abinde uſque molendinum de Harpeſford, Et abinde uſque Thornhul, Et abinde uſque Sydway, Et abinde uſque La Lee, Et ſic uſque Horton, Et abinde per medium Laſhete uſque Gomerichesford, & abinde uſque Rolneſcrouch, & abinde uſque Wiſhemoredene, & abinde uſque Brudeford, ubi tres com. conveniũt, viz. Surr' Berk. & South. Et ſic dicunt quòd totus Com. Surr' eſt extra foreſtam, & fuit tempore regis H. proavi dom. regis nunc, ſicut pater per quandam perambulationẽ factam tempore ejuſdem Regis H. ſecundùm tenorem Chartæ Regis H. de foreſta: dicunt etiam, quòd, tempore Regis Edwardi avi dicti regis nunc, quædam inquiſitio capta fuit apud Lampeth, coram Rogero Gravaſon, Johanne de Berwike, Radolpho de Hengham, Wil. Jugge & Joh. de Cokeſley, per procurationem dom. Hug. le Diſpenſ. ſenioris hominib' com. præd' non præmunitis, except' quibuſdã perſonis in inquiſitione illa exiſten', vi & metu ejuſdem Hugonis ad hoc ductis, ad bundas & metas in Foreſtis com. pred' faciend', qui nullam perambulationem nec equitationem in Foreſtis illis fecerunt, nec bundas nec metas in eiſdem poſuerunt: Et quia, aliàs tempore Regis Ed. avi dom. R. nunc upta fuit inquiſitio de hujuſmodi metis & bundis, prout liquet per inquiſitionem iſtam modo captam, & etiam ex dictis prædict. Johannis de Swinerton: Ideo prædictus Thom. & ſocij ſui, perambulation. in foreſtis prædictis juxta metas & bundas in inquiſitione iſta modo capt. content', facere diſtulerunt, uſque diem Lunæ in feſto Sancti Matthei apud Weymouth, ad interim conſulend. & deliberand', qualiter in hoc caſu in præmiſſis ſit faciend. Quẽ quidẽ diẽ præfixerunt præfatis Johanni de Swnarton, Viridar', Foreſtar', Jurator', & aliis de foreſtis illis ibidẽ exiſten', ut prædictũ eſt, quod ipſi ibid. tunc intereſſent. Poſtea ad diem ſllum prædict', Johannes de Stonore, Johannes de Iſeld, & Johannes Dabnon, venerũt ad

ad locũ prædict'. & Cuſtos foreſtæ dom. Regis citra Trẽtam, nec ejus locũ tenens, nec aliquis foreſtarius foreſtar' prædictarũ, ſcilicet, Viridar', Jurator' prædict', & alii in foreſtis illis cõmorantes venerunt. Et ſuper hoc dom. Rex mandavit Tho. ſociis ſuis tribus vel duobus eorũ breve ſuum, quòd vocatur Non obſtante, ut patet ſupra.

Et ideo prædicti Viridarii, Jurator' & alii in foreſtis prædict' commorantes, per viſum prædictorum Johannis, Joh. & Johan. non expectata præſentia cuſtodis foreſtæ, vel ejus locũ tenentis, ad prædict' perãmbulationes faciend. proceſſerunt in hunc modũ: viz. de Waymouth in longitudine Tamiſiæ, uſq; Stanesbridg, Et abinde in longitudine Tamiſiæ uſque Loderlakeſhache, ubi tres com. conveniunt, viz. Surrey, Berk. & Buck. Et abinde dimittendo com. Berk. à dextra parte uſque Stonyhelwel, Et abinde uſq; les Quelms, Et abinde uſque Orientalem corneram parci de Windſor', Et inſuper in longitudine palatii ejuſdem parci uſque molendinum de Harpesford, Et abinde per eundem palatium uſque Auſtralem portum ejuſdem parci, Et abinde tranſmeando Regiam viam uſq; Windwengſhul, Et abinde uſque interiorem partem de Bromhall, Et abinde per viam quæ dicitur Sydeway in longitudine ejuſdem viæ, Et abinde uſque La Lee, & ſic uſque Horton, Et abinde per mdium la Shete uſque Gomerichesford, Et abinde uſque Rolneſcrouche, Et abinde declinando in dextra parte uſq; Wyſhemorſeden, Et abinde uſque Brudeforde-bridge, ubi tres com' conveninnt, videlicet, Surrey Berk. & South. Et ita per prædictas metas & bundas facta eſt perambulatio foreſtarum prædict. in com. prædict'. Et præfat. Joh. & ſocii ſui in diverſis locis, ubi videbatur eis faciend', publicè proclamat. fecerunt, inhibent. omnibus & ſingulis ex parte domini Regis, ne quis venare. ſeu aliquid malefaceret in prædict. foreſtis, prætextu perambulat', antequam perambulatio illa per dominum Regem & Conſilium ſuum confirmaretur, prout

in prædicto parliamento ipsius domini Regis fuit ordinat', sub pœna quæ incubuerit.

Puis apres, la dit Communalty del dit County luy a le Chaunceller nostre seignior le Roy esteant adonk a Pontfret, en priant en pleine Court a Sir John de Hatham Ebesq de Ely, Chaunceller adonk nostre Seig. le Roy, que beult lenquest de la puraley de Surr' faire chibache & retorn. per les Justices devant luy quil fait dreit & reason, & que la dit puraley fuiss. confirm per charter nostre seignior le roy, solonqs sa prim. charter, quil graunta des purales confirm. a son parliam. charter, West. lan de son Reigne primer, Et cela chart. fuit mis avant tesmoignant la bolunt nostre seig. le roy, come avantdit est. Et le dit Chaunceller appelles a luy, les plus banes Clerks de la place, nomemēt Westr. Hen. de Clif. Sir Will' de Harlaston, Sir Michael de Math, Sir Tho. de Ebesham, Sir Hen. de Edonstow, Sir Hugh de Bourgh, & Sir Adam Brome, & auters, & prist lier le dit enquest en pleine county: Et puis counsailerent ensemble ceo que meux fuit a faire pur le Roy, Et darreine agarderent que la dit Communalty fuy bziefe de garnish. le Constable del Castle de Windsr. quil fuit a certein jour devant eux a la dit Chauncel. a mōstrer sil scavoit rien dire pur le roy, que la dit puraley ne stroit confirme. Et ē ceo, que le bziefe fuit a seal avant que Mons. John de Lyle adonk Cōstable de Windsor bient a Pōtfret, & fuit assis. obesk le Chācel. ē plein court; Et pur ceo que le dit Cōst. fuit illonk ē prop. persō, dit fuit a luy per le Chācelier, quil alast, & se abisat pur le Roy, sil scaboit rien dire a targ. execution de le dit puraley, & sur ceo jour luy fuit done de jour ē aut', un semaigne entre illok a Pont' & quil parlat en le mesme tēps obe nostre Seig. le Roy, & obe son Coun. adonk esteant a Pont. per le dit bevoigne, le quel Const' alast, & soy abisat de ceo obesq; nost. Seig. le Roy, obe son Counsail, & le dreinct jour de la semaign il

Nota bien que per cest president le perambulation ne fait ascun disafforestation devant que e Roy ad confirme le perambulation ove parolx de disafforestation.

il bient en la Chancery, & demaund luy ſuit, ſi il ſaboit rien dire pur le Roy, & il allegea en pleine Court pur noſtre Seignior le Roy, que luy aboit un Enqueſt pris ē tēps le roy E. aiel noſtre Seig', Seig. le Roy que oze eſt a Lampbeth, de cert. metes & bundes de la ſozeſt de Windſ. en le County de Sur', devant cert. ſeaux & leaux noſtre Seig. le Roy a ceo deputes, & la quel choſe ſuit alledge devant Monſ. Tho. Tregoz, & ces compaignions, per Monſ. John de Swynertō, Lieuten. le Gardeine de la ſozeſt de la Trent, & pzia que la Court de ſe boilet aviſer pur le Roy E. La Com. allegea, que ceſt Enq. de ceſt puraley retozne a oze devant eux, ne ſait mention de la dit Enqueſt. Et puis demaund ſuit per le Chaunceller al Conſtable, ſil ſaboit auter choſe dire pur le Roy, et il reſpond. que non, pur quoy il alaſt ſans jour adonk hozs de la court. Et dit ſuit a la Conſt. que agardaſt lour jour de jour en aut. & que ſe boilet aviſer en meſne temps. Et puis noſtre Seig. le Roy ſe endzeſſa hozs de parties del Nozth, tank a les parties de Weſt. & le Chanceller obeiz, & la Communaltie abant ſuy apzes pur la dit beſoigne de jour en jour, tank noſtre Seig. le Roy bient a Hayles, & de Hayles, a Winchcombe, Et a que lieu la Chaunceller ſuit aſſeſſ. pleneremēt, & Monſ. Roger de Mozтimer Counte de la Marche, & auters graundes furent aſſeſſ. pzes le Chaunceller, ou la dit Communaltie pzia le Chaunceller, que il ent fait dzoit & reaſon, & quil commaundaſt, ſi luy pleſt, que la dit puraley ſoit confirm: Ou le dit Chaunceller ſuit lier lenqueſt debāt le dit Counte de la Marche & auters, & counſailerent enſemble: Et au darreine dit ſunt a eux, que les grandes de la terre, & le Counſaile le Roy ſerroit plener a Glouceſter la pzochein ſemaigne ſuyant, quant lenterrement le Roy Edward piere noſtre Seignioz le Roy que oze eſt ſe feit, & adonk counſails enſemble devant le Roy et obe pieres de la terre que adonk il ſerront, quil eut feit dzoit

& reason, & sur ceo ils furent ajournes a Glouceſter, & le dit Communaltie ſuy apres de Winchcomb tãk a Chiltenham, & de Chiltenham tank a Glouceſter, & illonk il miſtrent abant lour beſoigne & priant cõfirmation come abant, & illok en pleine Counſaile noſtre ſeignior le Roy enter les grandes de la teare illoks eſteants, ſcil. Henry de Lancaſter Marſhall, Edmond County de Kent, John de County de Gzane, Roger County de la March, & auters Barons & Chivalers prives de Counſail le Roy firent choſes abãtdits declares & pronounces debant eux per le Chancelier, ou a darrein accord ſuit enter eux, oue les choſes fuiſſent confirmes ſolonc le graunt que noſtre ſeignior le Roy graunta a ſon parliament. Et commandſuit a dit Chãceller, quil deliberaſt la dit Communalty, ſur quoy ils averont jour de jour en auter, pur ceo que noſtre ſeig. le Roy ſe remove hors de Glouceſter a Tewkeſbury, & de illok tank a Worceſter, ou noſtre Seigniour tient ſon Noel. Et le dit Communalty pria execution come abant, & le Chancelier commaund a faire la Charter, & quant la Charter ſuit eſcript pur eux, ſuit commandque il ne voilet la Charter a ſealer ſans ſcaveir adeprimes la targe noſtre ſeig. le roy de ceo faire en garrant. Et puis apres tant ſuit ſuy frechement per la dit Communalty la vinderdy la jour de la Mat. noſtre ſeignior que la targe ſuit commaund. de faire al dit Chauncelier, & fuit fait, & il abient en garrant, iſſint que lendemaine le ſamadie le jour de S. Steven ſuit la Charter de confirmement de la dit puraley fait & enſeale en un petit meaſon aſſiſ. ſur leu de Seberne deyns la Prior de Worceſter la, ou il aſſelerẽt la dit jour tout auter briefes touchants le Commune de la terre, & payeront lour fee del ſeale, & abeyont lour Charter confirme, come appiert per exemplification de icel en la dit manner, que enſuit.

Edwardus, Dei gratia, Rex Angliæ, dominus Hiberniæ, &

& dux Aquitaniæ, omnibus ad quos præſentes literæ pervenerint, ſalutem: Sciatis, quòd, cum nuper in parliament. noſtro apud Weſtm. convocato, ad ſupplicationem Prælatorum, Comitum, Baronum, & Communitatis Regni noſtri, per literas noſtras patentes conceſſ. quòd perambulat. tempore Domini Ed. quondam Regis Angliæ, Avi noſtri, in Foreſtis ſuis, tam citra Trentam quam ultra factæ, & per ipſum Avum noſtrum conceſſæ & confirmatæ ſecund' metas & bundas in eiſdem perambulat' contentas obſerventur imperpetuum & teneantur, Et quòd perambulat' in Foreſtis, in quibus tempore dicti Avi noſtri factæ non fuerunt, per fideles noſtros ad hoc aſſign. fierent, ſub ea celeritate qua fieri poſſent bono modo: Et quòd nos perambulationes illas, cum factæ fuerint, & nobis returnatæ ſub metis & bundis quas in eiſdem inveniri contigerit, pro nobis & hæred. noſtris confirmari & approbari faceremus, prout in literis noſtris prædict. pleniùs continetur, Ac poſtmodum ad requiſitionem Cõmunit. com. Surrey nobis ſuggerent', quòd perambulat. in Foreſtis noſtris in eodem Com. factæ non fuerunt, Volentes conceſſionem noſtram prædictam effectum mancipari, aſſignavimus dilectos & fideles noſtros Tho. Tregor', Johan. de Stonore, Joh. de Iſeld, & Joh. de Dabnon, ad perambulationem rectam in foreſtis noſtris in eodem Com. in quibus perambulationes tempore dicti avi noſtri factæ non fuerunt, per ſacrament' tam militum quam aliorum probor' & legalium hominum de eodem com. per quos rei veritas melius ſciri, & perambulationes illæ melius fieri poſſent, faciend', juxta tenorem Chartæ dom. H. quondam Regis Angliæ proavi noſtri, de foreſta: Ac iidem Thomas, Johannes, Johan. & Johannes, perambulat. hujuſmodi in eodem com. prætextu aſſignat' noſtræ eis inde ſic factæ, fecerunt, & eas nobis in Cancellar' noſtram miſerunt, in forma ſubſcripta.

Perambulatio Foreſtæ Comitatus Surrey, juxta metas & bundas, per inquiſitionem inde captas coram Thoma Tregorr',

Joh. de Stonore, Joh. de Iseld, & Jo. Dalmon, ad perambulationem illam faciend' assignat', Ac postea facta per visum predict' Johan. Jo. & Joh. ac per sacram' H. Huse, Henrici de Mounteforti, Militum, Ro. le Dol. Henrici de Somerbury, Will' Huse, Joh. de Bures sen', Mich. de Bachiller, Johannis Prodehome, Will' de Porkle, Joh. Stoket, Rob. le Ditton, & Joh. de Kingswood Jurat': Qui dicunt, quod tempore dicti avi nostri nulla perambulatio facta fuit in com' Surr', sed perambulatio faciend' in Forestis illis inchoanda est apud Waymouth, Et abinde semper in longitudine Tamisiæ usq; Loderlakeshach, ubi tres com' conveniunt, viz. Surr' Berk. & Buck. Et abinde usq; Orientalem corneram parci de Windsore, Et abinde usque molendinum de Harpesford, Et abinde usq; Thornhull, Et abinde usq; Sidewey, Et abinde usque la Lee, & sic usque Horton, Et abinde per medium la Shete usq; Gomerishford, Et abinde usque Rolnescrouch, Et abinde usque Wishemoresden, Et abinde usque Brudeford ubi tres Com' conveniunt, viz. Surrey, Berk. & South. Et quod totus Com' Surrey est extra Forestam, & fuit tempore dicti Regis Henrici proavi nostri.

Nos perambulationes prædict' acceptantes, eã pro nobis & hæred. nostris, quantum in nobis est, ratificamus, approbamus, concedimus, & confirmamus, secundùm metas & bundas prædictas imperpetuum observand'; Salvo semper in omnibus jure nostro. In cujus rei testimonium has literas, nostras fieri fecimus patentes. Teste me ipso apud Wigorn. xxvj. die Decemb. Anno regni nostri primo.

Per ipsum Regem & Cons.

Et puiz apres, la dit Communalty sup tank a Solphul et Arderne, apres la dit Chaunceller nostre seig. le roy, e illok abeyent la Chart. double: Assint que la prim. Charter ey est aseale de bert sere, que demoert en la gard en Labbey de Certesey en le County de Surrey, Et lauter a seale de blanche sere, que demoert en gard.

Et

Et pur ceo, que nostre Seignior le Roy veolt que la Chart. de confirment de la dit Puraley, soit lie e pleine County, s de ceo proclamation fait, que ele soit firment gard solonqs les bounds: sane per luy quarant jours dencbaser ses beasts, e a ceo faire, maunda son briefe a Micront de Surrey, come plus pleignement appiert per le transcript, que ensuit.

Edwardus, Dei gratia Rex Angliæ, dominus Hiberniæ, & dux Aquit' vicec. Surrey salut': Cum nuper in Parliamento nostro apud Westm. convocato, ad supplicationem Prælatorum, Comitum, Baronum, & Communitatis regni nostri, per literas nostras patentes concess. quòd perambulat. tempore Domini E. quondam regis Angliæ, Avi nostri, in Forestis suis, tam citra Trentam quam ultra factæ, & per ipsum Avum nostrum concessæ & confirmatæ secund' metas & bundas in eisdem perambulat. contentas observarentur imperpetuũ, & tenerentur, Et quòd perambulat. in Forestis, in quibus tempore dicti Avi nostri factæ non fuerunt, per fideles nostros ad hoc assign. fierent, sub ea celeritate qua fieri possent bono modo: Et quòd nos perambulationes illas, cum factæ fuerint, & nobis returnatæ sub metis & bundis, quas in eisdem inveniri contigerit, pro nobis & hæredibus nostris confirmari & approbari faceremus, prout in literis nostris plenius continetur; Ac postmodum ad requisitionem Cõitatis com' Surrey nobis suggerent', quòd perambulat. in Forestis nostris in eodem Com' factæ non fuerunt, Volentes concessionem nostram prædictam effectum mancipari, assignavimus quosdam fideles nostros ad perambulationem rectam in forestis nostris in eodem Commitat', in quibus perambulationes tempore dicti avi nostri factæ non fuerunt, per sacramentum tam militum quam aliorum proborum & legalium hominum de eodem Com', per quos rei veritas melius sciri, & perambulationes illæ meliùs fieri possent, faciend', juxta tenorem Chartæ domini Henrici quondam Regis Angliæ,

Angliæ proavi noſtri de Foreſta: Iidemq; fideles noſtri perambulat' hujuſmodi in eodem com', prætextu aſſign. noſtræ eis inde ſic factæ, fecerunt, & eas nobis in Cancellariã noſtrã miſerunt: Ac nos per literas noſtras patentes dictam perambulationem acceptavimus, & eam pro nobis & hæred. noſtris, quantum in nobis eſt, ratificavimus, approbavimus, conceſſerimus, & confirmavimus, ſecundum metas & bundas in dict' perambulat. contentas imperpetuum obſervand': Salvo ſemper in omnibus jure noſtro, prout in literis prædictis noſtras pleniùs continetur: Tibi precipimus, quòd literas noſtras in pleno com. tuo legi, & dictam perambulationem ſecundũ metas & bundas in eiſdem literis noſtris contentas publicé proclamari, & firmiter obſervari faciatis: Salvis nobis quadragint. diebus à tempore dat' hujus brevis numerand', ad feras noſtras in locis extra foreſtam perambulat. prædict. ſic poſit. exiſtentes, ad foreſtam noſtram effugand'. Teſte me ipſo apud Wigorn. xxvj. die Decemb. Anno regni noſtri primo.

Per ipſum Regem & Conſ.

Et pur ceo, que noſtre Seigniour le Roy voile, que ſon Conſtable de ſon Caſtel de Windſ. ſoit apres les bounds de la dit puraley, & quil enchaſea ſes beaſts deins le tẽps de quarrant jour, hors de la puraley, tank a ſa ſoreſt, noſtre Seig. le Roy, ad maund ſon bzief a ceo faire, en garrant, come appiert plus pleignement per le tranſcript, que enſuit.

Edwardus, Dei gratia Rex Angliæ, dominus Hiberniæ, & dux Aquitaniæ, Conſtabular. Caſtri ſui de Windſore, vel ejus locum tenenti, ſalutem: Cum nuper in Parliamento noſtro apud Weſtm. convocato, ad ſupplicationem Prælatorum, Comitum, Baronum, & Communitatis regni noſtri, per literas noſtras patentes conceſſ. quòd perambulat. tempore Domini E. quondam regis Angliæ, Avi noſtri, in Foreſtis ſuis, tam citra Trentam quam ultra factæ,

&

& per ipſum Avum noſtrum conceſſæ & confirmatæ ſecund' metas & bundas in eiſdem perambulat. contentas obſerventur imperpetuum & teneantur, Et quòd perambulat. in Foreſtis; in quibus tempore dicti Avi noſtri factæ non fuerunt, per fideles noſtros ad hoc aſſign. fierent, ſub ea celeritate qua fieri poſſent bono modo: Et quòd nos perambulationes illas, cum factæ fuerint, & nobis returnatæ ſub metis & bundis, quas in eiſdem inveniri contigerit, pro nobis & hæredibus noſtris confirmari & approbari faceremus, prout in literis noſtris pleniùs continetur; Ac poſtmodum ad requiſitionem Cõitatis com' Surrey nobis ſuggerent', quòd perambulat. in Foreſtis noſtris in eodem Com' factæ non fuerunt, Volentes conceſſionem noſtram prædictam effectum mancipari, aſſignavimus dilectos & fideles noſtros Tho. Tregorr', Joh. de Stonore, Joh. de Iſeld, & Joh. de Dabnon, ad perambulationem rectam in foreſtis noſtris in eodem Com', in quibus perambulationes tempore dicti avi noſtri factæ non fuerunt, per ſacramentum tam militum quam aliorum proborum & legalium hominum de eodem Com', per quos rei veritas melius ſciri, & perambulationes illæ meliùs fieri poſſent, faciend', juxta tenorem Chartæ domini Henrici quondam Regis Angliæ, proavi noſtri, de Foreſta: Ac iidem Thomas, Johannes, Joh. & Johannes, perambulat. hujuſmodi in eodem com', pretextu aſſign. noſtræ eis inde fic fact' fecerint, & eas nobis in Cancil' noſtrã miſerunt in forma ſubſcripta.

Perambulatio Foreſtæ comitatus Surrey, juxta metas & bundas per inquiſitionem inde captam coram Thoma Tregorr', Joh. de Stonore, Joh. de Iſeld, & Jo. Dabnon, ad perambulationem illam faciend' aſſignat', Ac poſtea facta per viſum predict' Johan. Jo. & Joh. ac per ſacram' H. Huſe, Henrici de Mounteforti, Militum, Ro. le Dol. Henrici de Somerbury, Will' Huſe, Joh. de Bures ſen', Mich. de Bachiller, Johannis Prodehomæ, Will' de Porkle, Joh. Stoket, Rob. de Ditton, & Joh. de Kinſwood Jurat': Qui dicunt, quòd tempore dicti avi

noſtri

nostri nulla perambulatio facta fuit in com' Surr', sed perambulatio faciend' in Foresti illis inchoanda est apud Waymouth, Et abinde semper in longitudine Tamisiæ usq; Loderlakeshach, ubi tres com' conveniunt, viz. Surr', Berk, & Buck. Et abinde usq; Orientalem corneram parci de Windsore, Et abinde usque molendinum de Harpesford, Et abinde usq; Thornhull, Et abinde usq; Sidewey, Et abinde usque la Lee, & sic usque Horton, Et abinde per medium la Shete usq; Gomerishford, Et abinde usque Rolnescrouch, Et abinde usque Wishemoresden, Et abinde usque Brudeford ubi tres Com' conveniunt, viz. Surrey, Berk. & South. Et quòd totus Com. Surrey est extra Forestam, & fuit tempore dicti Regis Henrici proavi nostri.

Ac nos perambulationes prædict' acceptantes, & eas pro nobis & hæred. nostris, quantum in nobis est, ratificaverimus, approbaverimus, concesserimus, & confirmaverimus, secundùm metas & bundas prædictas imperpetuum observand': Salvo semper in omnibus jure nostro, prout in literis nostris præd' pleniùs continetur: Per quod præcepimus Vicecom. nostro com. præd', quòd perambulat. prædict' secundùm metas & bundas in eisdem literis nostris contentas faciat observari: Salvis nobis quadraginta diebus à tempore brevis nostri sibi inde directi numerand', ad feras nostras in locis extra forestam per perambulationes prædict' sic positis existentes, ad Forestam nostram effugand'. Vobis mandamus, quòd feras nostras infra quadraginta dies à locis extra forestam sic positis, ad forestam cum omni celeritate, qua poteritis, effugari faciatis, Et talem & tantam diligentiam in hac parte apponatis, quod dampnum nobis de feris nostris ibidem per vestram negligentiam nullatenus generet'. Teste meipso apud Wygorn, xxvi. die Decembris, Anno Regni nostri primo.

Per ipsum Regem & Cons.

Per

Per vertue de quel briefe, apres le Charter iye en Countie, & la proclamation fait, que le Puraley ſerroit firmement guard, le dit Conſtable del Caſtle de Windſore, enchaſea les beaſts noſtre Seignior le Roy deins le temps de quarrante jours abauntdit, hors de la puraley, en la foreſt noſtre Seignior le Roy, & deins quel temps les bone gents del Countie de Surrey ſe tindrent en pear, ſans rien chaſer ou male faire: Et apres les quarrante jours, les bones gents del Countie de Surrey uſerent lour franchiſe come atteint a eux, ſolonc a volunt' noſtre Seignior le Roy a eux fait abantdit & confirme.

Icy finiſt les proces de la puraley de la Foreſt de Windſore, fait en le Countie de Surrey, & ſuy en la maner come abaunt eſt dit, tank ele fuit encharter & confirme la bon volunt' noſtre ſeignior le Roy, ſolonc ceo quil graunta en pleine Parliament, as grandes & la Communaltie de la terre, a tener & a garder pur luy & pur ſes heires a touts jours per ſes letters patents, come ils fuiſſent confirmes.

3 Whereof it is named Pourlieu, Pourluy, or Pourallee.

By theſe two preſidents before recited, it is plainly declared & ſet down, how, and in what manner the new afforeſtations were diſafforeſted again by reaſon of the perãbulations; & alſo how the pouralles had their firſt beginning; for all ſuch woods & lands as were afforeſted by King Hen. the ſecond, King Rich. the firſt, or King John, as aforeſaid, and were afterwards by the perambulations that were made thereof, ſebered from the old ancient foreſts, and diſafforeſted again, they were and yet ſtill are called Pourallees; that is to ſay, woods and lands, which were ſebered from the old Foreſts, and ſo diſafforeſted by the perambulations: For, this word Pourallee

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in French, is Perambulatio in Latin, that is, a Perambulation or perfect view, which is taken by walking ouer a thing, or nér unto it; so this word pourallee being so understood in his own proper signification doth declare both the original beginning of the thing, and also the nature thereof: And these two words Purlieu and Purluy are oftentimes abusively used and taken for this word pourallee; but being rightly understood they are words far different in signification from pourallee: for Purlieu is for the place, and Pourluy is for him; whereas this word Pourallee doth signifie lands disafforested by the Perambulation.

4 That the Purlieu in some sort is Forest still.

AND although that such new afforestations were disafforested again by the perambulations, as aforesaid, and so thereby the same became pourallee (or pourlieu, as some men abusively do call it,) yet the same is not so absolutely disafforested thereby for every man, but that in some sort the same doth remain forest still to some men, and yet disafforested and freed in some sort for some men: for, it was granted even by the words of Charta de Foresta, that if the King had afforested any woods of any mans, more than the Kings own demein woods and lands, ad dampnum illius cujus boscus ille fuerit, statim deafforestentur, that is to say, if they were afforested to the hurt or loss of him whose woods or lands the same were, that forthwith they should be disafforested again: So that quoad aliquod dampnum illius cujus Boscus ille fuerit deafforestentur, which is, that those woods & lands which were newly afforested, and disafforested again by Charta de Foresta, & the perambulations that were made thereof, they were disafforested and freed of the bondage of the forest, only for those that were the proper owners there-

Charta de foresta, artic. 1.

thereof, so that the very owners of such woods and lands might, after such disafforestation, fell and cut down their woods at their own pleasure, without any licence of the King, and also convert their meadows and pastures into tillage or arable land, and otherwise improve the same to their better advantage and profit; and likewise they might hunt & chase the wild beasts of the forest towards the forest, so that they do not forestal nor forelet them in their return towards the forest again: But yet no other man is to take any benefit in the pourallee by the disafforestation of those woods and lands, but only the proper owners thereof: So that the pourallee is disafforested, but only quoad illos, to those that are the proper owners of the woods and lands there; and the same remaineth forest still quoad illos, to those that are not owners of any woods or lands in the pourallees: For the owners of such woods and lands within the pourallees may suffer the same to remain forest still, if they will, notwithstanding the disafforestation: as it doth appear by the statute of the pourallee made in An. 33. Ed. 1. in which case, if the owners of such woods and lands in the Pourallées had rather to have the same to remain within the forest, as it was before, (to the intent that they may have the benefit of common within the forest) then to be out of the forest; and within the Pourallée they may be at their choice therein if they will: Which doth prove, that the woods and lands in the Pourallée are disafforested but only for the owners thereof, and not generally for every man to hunt and spoil the wild beasts of the forest there at their own pleasure; for, if the wild beasts of the King do chance to wander out of the forest into the Pourallée, the King hath a property still in those wild beasts against every man, but only against them that are the proper owners of the woods and lands in which they are; for there they have a special property in those wild beasts

See Master *Hesket* in his Reading upon Charta de foresta, and Master *Trehern* accordingly.

Anno 33. E. 1. Stat. 5.

beasts, Ratione soli; but yet so, that they take them by chasing with Greyhounds or Dogges, without any forestalling or forfeiting of them in their course or return again towards the Forest; for the King hath always Officers in the Pourallée, which are called Rangers, to attend upon the wild beasts of the Forest, and to rechase them back again out of the Pourallée into the Forest: which doth prove, that although the wild beasts do wander out of the Forest into the Pourallée, yet the King hath a property still in those wild beasts; for otherwise the Ranger might not lawfully rechase them back again into the Forest. And it is holden by the opinion of Master Justice Cokeine, in Anno 7. of Henry the first, that if a Hart do go out of the Forest of the King, the Kings Forresters may follow after him, and make Proclamation in the next Towns where the same Hart is, that no man shall hunt or slay him; and that then, after that such proclamation is made, it is not lawful for any man to take or slay such a Hart: which doth prove, that although such wild beasts be out of the forest, and in the Pourallée, yet the King hath a property still in them; and therefore the Pourallée in some sort is forest still for the Kings wild beasts, to have their free concourse in, and safe return again, to the forest, without any hurt or detriment of any man, other than the owners of such woods and lands in the Pourallées wherein they shall be found, to hunt and chase them towards the forest again, without any forestalling or forfeiting of them in their return to the forest.

Vide 13. H. 7. fol. 10. pla. 14. Paschæ An. 7. H. 6. fol. 36. plac. 41.

Vide H. 13. H. 7. fol. 16. p. 14. quel case pro ut que con ét que hõr poit prescribe al enchaser les savage beasts in mon terre, que sont mes seres, uncore il ne poit prescriber d' enchaser les beasts savage del Roy, que sont en mon terre: Sicome les feres que alers hors le Foreſt le Roy en le pourallée.

5 How, and for whom, the Purlieu is free to hunt in.

ALthough that the pourallee be forest stil to those that have neither woods nor lands of freehold therein; yet those that have woods and lands of freehold within the

the pourallees to the yearly value of forty shillings by the year, may keep greyhounds by the Statute of 13. R. 2. cap. 13. [But by a new Statute made 1. Jac. cap. 7. those only that have lands of inheritance to the yearly value of 10 l. or lands of inheritance to the yearly value of 30 l. or have goods worth 200 l. or be the sons of a Knight or Baron, or some person of a higher degree, or the son and heir apparant of an Esquire, may keep greyhounds: And when that they do find the wild beasts of the Forest within their woods and lands in the pourallee, they may chase the same wild beasts with their Greyhounds towards the Forest: for, the owners of such woods and lands in the pourallees have property in those wild beasts, so long as they are in their own woods and lands, ratione soli; and so that they do first make their course in their own pourallees, that is to say, in their own woods or lands, they may pursue their chase through every other mans lands: But if the wild beasts will return home again to the Kings Forest, to challenge the benefit of their sanctuary of peace therein, they must have their free passage thereunto, without any forestalling or forsetting of them, in their return and course between the Forest and the Pourallee, either with dogs, gun, cross-bow, long-bow, dead hey, quick hey, or any manner of engin or let whatsoever: for, all such manner of forestalling or forsetting of the wild beasts between the Forest and the Pourallee, is absolutely forbidden by the Assises of Woodstock, made by King Henry the Second, upon pain of one years imprisonment, and the offenders therein to be fined also at the Kings pleasure; and so the pourallee in some sort is free for some men, as aforesaid, to hunt there.

See the Statute of 13. R. 2. cap. 13. & the Stat. of 1. Jac. cap. 7.

See the assises of Woodstock, made in An. 30. H. 2. art. 13.

6. The difference between the Purlieu and the Forest.

THe difference between the Forest, and the Pourallee, is this, that all the woods and lands which are within the Regard of the Forest are absolutely within the bondage and charge of the Forest; as well in respect of the owners of those woods and lands, as of any other person, for men may not sell nor cut down their woods within the Regard of the Forest, without license of the King, nor otherwise improve their lands; nor no man may in any sort hunt, chase, or disquiet the wild beasts of the Forest in their own lands within the Regard of the Forest, without some warrant or authority derived from the King: But those that have woods and lands within the pourallees, they are without the regard of the forest; and therefore they are absolutely free from the bondage of the Forest, in respect of felling of their woods, and converting of their meadows and pastures into arable land and tillage, and otherwise to improve the same at their own pleasure to their best advantage and profit: but yet the woods and lands in the pourallees, although that they be without the Regard of the Forest, are not absolutely freed of the bondage of the Forest, in respect of the wild beasts, to have their haunt and being therein, at such times as they shall chance to wander out of the Forest, so that the woods and lands in the Pourallee were once absolutely Forest, but now they are but conditionally in some sort Forest.

7. The

7. The difference between the Purlieu, and that which is no Purlieu, nor Forest, but is absolutely free.

And the difference between the Pourallee, and that which is no Pourallee, nor Forest neither, but is absolutely Free, is this: First, the same was never Forest at any time; and therefore never disafforested, and for that cause the same is absolutely free from any bondage of the Forest in any sort; and in such Lands the Kings wild beasts have no Priviledge allowed them to haunt or repair therein, neither are there any Rangers or Ranger appointed by the King to rechase them out of those Lands into the Forest again: So that, in those Lands which are neither Forest, nor Pourallee, but are absolutely free (if they be not too neer adjoyning unto the precincts and bounds of the Forest) it is lawful for every person, allowed by the said statutes to keep greyhounds in any sort, to hunt & chase with dogs those wild beasts that are therein (forestalling and foresetting of them in their return to the Forest again, only excepted.)

8. Who may hunt in the Purlieu, and who shall be said to be a Purlieu man.

But now, who may hunt in the Pourallee, and who shall be said to be a Pourallee man, and who not, is here very necessary to be declared. And therefore it is to be understood, that he that may lawfully hunt in the Pourallee, must be a Pourallee man. And a Pourallee man is he that hath free lands within the Pourallee, to the yearly value of forty shillings, for such a Pourallee man may lawfully keep Greyhounds by the Statute of 13. R. 2. to hunt and chase there; and therefore he may hunt his

Vid. Co. 4. Inst. 303, 304.

13. R. 2. c. 7.

own Pourallees, that is to say, his own woods and lands
1 Ja. c. 7. that he hath within the Pourallees [But now by a late Statute, an. 1. Jac. cap. 7. no man may keep a greyhound but he that hath 10 l. by the year of lands of inheritance, or 30 l. freehold land by the year, or goods to the value of 200 l. or that is son of a Knight at least, or the son and heir apparant of an Esquire: And therefore it seemeth that a Pourallee man that may keep greyhounds must be a man estated according to this Law of 1. Jac. So that upon consideration of both these Statutes, viz. of 13. R. 2. and of 1. Jac. he that hath lands or tenements to the yearly value of 40 s. only, and hath also goods worth 200 l. or is the son of a Knight at least, or the son and heir apparant of an Esquire, may keep greyhounds within the Pourallee: or otherwise he must habe 10 l. land of inheritance by the year, or 30 l. by the year of freehold land] But no man may hunt his own Pourallees with any greyhound or greyhounds, or with any other dogs that are likely to kill any beast of benery or chase, except he may dispend after the proportion abobesaid by the year of free lands within the Pourallee; and for that cause the Pourallee is called Purluy, that is to say, For him, for it is free only for him that is so qualified, as abobesaid, to hunt in his own Pourallee: but yet so that he must always first make his course in his own woods or lands which he hath within the Pourallee; and therefore it is called Pourlieu, that is to say, for the place, or for his own woods or lands, but not in ebery place within the Pourallee, or in ebery mans woods or lands, but ebery man in his own woods and lands: for there is a difference between a Pourallee man, and a man that hath woods and lands within the Pourallee: For although that a man habe woods and lands within the Pourallee; yet if he may not dispend after the rate abobesaid, he is not a Pourallee man: But yet, if he

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do find any wild beasts of the Forest in his own Woods or lands within the Pourallee, he may chase them out of his woods and lands with little dogs, but not with greyhounds nor great dogs, as it doth appear by the Case in 43. of E. 3. of the Earl of Arundel. But he that hath no freehold at all of any lands within the Pourallee, is utterly excluded from hunting or chasing in the Pourallee, and to such men the Pourallee is absolutely Forest still. And so the Pourallee is Pourluy, that is, only for him that is a Pourallee man, and for him it is but Pourlieu, which is to hunt in his own lands, and not otherwise. Hillar. An. 43. E. 3. fo. 8. pla. 23.

9. In what sort a Purlieu man may hunt in the Purlieu.

But now, in what sort a Pourallee man may hunt and chase the wild beasts of the Forest, being within his own Pourallee, that resteth yet to be declared: And therefore it is to be noted, that when any Pourallee man doth find any wild beasts of the Forest in his Pourallee, that is, in his own freehold lands that he hath within the Pourallee, he may let slip his Doggs after the wild beasts, and hunt and chase them there, so that he do not stand between them and the Forest with his Dogges to forestall and let them of their return again to the Forest, for that is prohibited and forbidden by the Assises of Woodstock, in these words, Item Rex præcipit, quòd nullus de cætero chaceat ullo modo ad capiendum feras per noctem infra Forestam, neque extra, ubicunque feræ suæ frequentant, vel pacem habent aut habere consueverunt, sub pœna imprisonment. unjus anni, & faciendo finum & redemptionem ad voluntatem suam, & quòd nullus sub eadem pœna faciat aliquam installationem feris suis vivam vel mortuam in- See the assises of H. 2. called the Assises of Woodst. art. 13.

ter forestam suam & boscos vel alia loca per ipsum vel progenitores suos deafforestat': the King commandeth that from henceforth no man shall chase or hunt by any means to take any wild beasts of the Forest by night within the Forest, nor yet without the Forest in any place wheresoever his wild beasts do frequent, or have a firm place, or have used to have a peace, upon pain of one years imprisonment, and to make his fine and ransome at the Kings will and pleasure; and likewise that no man shall, upon the same pain, make any forestalling for his wild beasts, either with dead hay or quickhay, between the Kings Forests and the woods or other places by him or his progenitors disafforested: By this it doth not only appear that all manner of forestalling with Dogs, or any other Engine, is utterly forbidden to be used in the pourallees, but also in what sort the same is to be punished, if any such thing be done; and therefore every pourallee man, or pourallee hunter, must know this, that although he do find the wild beasts of the Kings Forest in his own pourallee, and in respect thereof he hath property in them, Ratione soli, against every man saving against the King only: yet he hath but a conditional property in them, that is to say, if he can slea them with his dogs in chase, without any manner of forestalling, before that they do recover the Forest again, then such wild beasts are absolutely the owners of such dogs: but if such wild beasts do once recover the Forest again, although that they be Nisi infra filum forestæ, but within the list or the brinke of the Forest, before that the dogs do fasten upon them, then they are absolutely the Kings wild beasts again, or the owners of the Forest. But if any Pourallee man do first make his chase in his own Pourallee as he ought to do, he may still pursue and follow his chase thorow every other mans free land within the Pourallees,

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so that he do not enter into the Kings Forest, unless it be in some cases, as hereafter in the twelfth division of this chapter more at large shall be declared. And every Pourallee man must hunt his own Pourallee himself, and with no other company, but his own servants: neither may any Pourallee man appoint any other to hunt his Pourallee for him by his commandment, but only himself with his own household servants, when that he is present, and not otherwise: for the authority that a Pourallee man hath to hunt in his own Pourallee, is but a Conditional license of profit, which is strict, and cannot be set over to any other, as it doth appear in Ashtons case in 18. Ed. 4. where it is holden that if a man do give me a license to hunt and kill one Buck, in a certain place, and that to dispose, my servant cannot justifie to do that by my commandment, for that license goeth strictly to him to whom it is given, and to no other. And furthermore, no Pourallee man may hunt or kill any unreasonable deer, although that the same be found in their own Pourallee, for that were a double offence and trespass to the Forest, to spoil a wild beast that is good for nothing when that the same is slain; and such wild beasts, when that they are out of season, commonly are not able to make course, nor otherwise to shift for themselves by flight. Mich. 18. E. 4. fol. 14. pla. 12.

And if any Pourallee man with his dogs do chase the wild beasts of the Forest in his own Pourallee, and his dogs do still pursue their chase towards the Forest, before that they do enter into the Forest, he must repeal and call back again his dogs; for otherwise, if that they do chance to slea the same wild beast, or any other in the Forest, then the owner of such dogs shall be accounted a Trespasser in that killing within the Forest, Tanquam de manupasto; as it doth appear in 43. of Ed. 3. where it is holden, that if such a hunter do re-

Hill.An.43.E. 3.fol.8.p.23.

pell and call back again his dogs, before that they do enter into the Forest, that yet in that Case, although that they do chance to kill a wild beast in the Forest, the owner of such dogs shall be excused of that trespass, so that he himself do not enter into the Forest, nor meddle with the wild beasts so killed: and therefore to the end that a pourallee man may the better remember briefly in what sort he may hunt in the pourallee, let him learn these six Lessons:

1. That he do begin his chase in his own pourallee.
2. That he do not forestall nor kill the wild beasts with any Engine.
3. That before his dogs do enter in the Forest, he do repell and call them back again.
4. That in no sort he do pursue his dogs into the Forest, except that they fasten upon the deer first, and that the deer do draw the dogs into the Forest, and then kill the same.
5. That he do hunt with no more company but his own servants.
6. That he do hunt no unseasonable deer.

10. When and how often a Purlieu man may hunt there.

ALthough that a pourallee man may hunt and chase in the pourallee, as before hath been declared, yet it is to be understood that such hunting and chasing is to be used but at certain times, and not always, nor generally at all times: And therefore pourallee men must know this, that they may not hunt nor chase in their own pourallees, at all times, nor in what manner they themselves will; for then the pourallees would in very short time destroy the Forests, and that may not be suffered:

ed: wherefore the antient usage and policy of the Forest Laws have always prohibited pourallee men to hunt or chase in their own pourallees, contrary to any of these ten precepts, which hereafter do follow, viz.

A pourallee man may not hunt,

1. In the night, for that is inhibited by the Assises of Woodstock, in the 13. Article.
2. On the Sunday, for that day is appointed for the service of God only, and not for such pastimes.
3. In the fence moneth, for the disquieting of the deer that are great with fawn.
4. Any oftener than three days in one week, lest their often hunting may cause the disquiet of the wild beasts in the Forest.
5. With any more company than his own servants, because his interest of hunting is but a conditional license of profit that goeth strictly to him to whom the same is given, and not to any other.
6. Within forty days next after the Kings general hunting in the Forest, because then the wild beasts are feared out of the Forest, and do not go out of themselves.
7. Within forty days next before the Kings general hunting proclaimed, because then the wild beasts must not be disquieted, to the end that the King may have the full view of them.
8. When that the Forester is serving of any warrant neer unto the borders of the Pourallees, having notice thereof, for hindring him therein.
9. With any manner of forestalling, or other Engine, to take the deer withall, neither with gun, nor cross-bow, but only by chasing with his dogs, for that is prohibited by the Assises of Woodstock, artic. 13.
10. Any unseasonable deer, although that they do find them

them in their pourallees, because that then they are little worth, and not able to run; and therefore forbidden by the Laws of the Forest to be killed.

Bracton de legibus & consuetudinibus Angliæ.

The pourallee men must remember what M. Bracton saith, viz. utere tuo, ut alienum non lædas, that is to say, every man must use that which is his own, so that he do not hurt, nor harm any other man thereby. And in like manner, it may be said to the pourallee men, that they must use their pleasure of hunting and chasing in their pourallees, so that they do not thereby disturb the wild beasts of the Kings Forest that are within the regard of the Forest, of their firm peace: for if any common person had a Forest, or a chase of his own, he would hardly suffer or indure any other man to hunt or chase any wild beasts so nèr unto his Forest or Chase, that by such hunting and chasing his Forest or Chase might become destroyed; Ergo much less the King, whose only prerogative it is to have such Forests of wild beasts for his delight & pleasure: and therefore, as M. Pollard saith, in 12. of H. 8.

Trinitatis 12. H. 8. fol. 5. per Pollard.

Hoc facias alteri, quod tibi vis fieri, that is, Let every man do unto another as he would be done unto himself; and so let every man that is a pourallee man, hunt the wild beasts of the Kings Forest, being in their pourallee, so, as they would be contented to have their wild beasts if they were owners of Forests themselves.

And surely at this time it is a thing lamentable to behold and see, what stately and princely Forests (that in the times past were accounted ornaments unto a Kingdom) are now clean destroyed and spoiled: partly, because that the true méets and bounds of the Forest are not known unto the officers of the Forest, and to others, as they ought to be, by reason whereof that which is Forest is taken and used, or rather abused, for pourallee: and partly, because that the abuses and daily outrages that are committed in the pourallees are suffered to

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continue without any punishment, restraint, or gainsaying: for the pourallee men that in some sort may hunt and chase in their own pourallees, are suffered to use the same in what sort they will themselves, and by colour of their pourallee hunting they used continually to pursue their chase into the Forest; and then the same deer, or any other deer that their dogs do kill, they do carry away with them out of the Forest, clean contrary to the Laws of the Forest. And this is not only the use and custom of those that are pourallee men, and that by the Laws may hunt in some sort: but also every Londoner, and other strangers that have no lands within the pourallees, will do the like, which is clean contrary to the Laws of the Forest; and the suffering of these things doth clean destroy all the Forest where any pourallee is. How lamentable a thing is it to see two great huge stags in one morning to be hunted out of the pourallees into the heart of the Forest, and there killed, spoiled and carried away by mean men of no accompt, without any punishment for the same, and even when those wild beasts were unseasonable, and nought worth; whereas if they had been suffered to live untill the time of their season, they had been meet to have shewed a Prince pastime, and also meat for a Princes dish; and this hath not been done once or twice, but often and many times: Yea the like facts in effect are almost usual and common; for it seemeth the pourallee men with their adherents have consented together to destroy the Forest by colour of pourallee hunting, which they have almost brought to passe in the Forest of Waltham; or at the leastwise, they will do in short time, if their hunting be suffered, as it is now used.

But now, to return to my former purpose againe, which is, when and how often pourallee men may hunt in the pourallee, and when they may not. It is to be understood,

derſtood, Firſt, that no manner of perſon may hunt in the pourallees in the night, that is to ſay, after the ſetting of the Sun, until the riſing of the ſame; for by the Laws of this Realm, in many caſes, it is accounted for a day from the riſing of the Sun until the going down of the ſame; and likewiſe for a night from the ſetting of the Sun until the riſing of the ſame; and ſuch a day is called Dies Solaris, that is to ſay, a day that is accounted by the Sun; and the reaſon why it is not ſufferable for any perſon, either pourallee man, or other to hunt in the pourallees in the night, is, becauſe that the Kings wild beaſts may not be troubled nor diſquieted of their quiet feeding and reſt in the Forreſt: for it is not poſſible for any man to hunt in the pourallees in the night, but that the ſame will be Ad terrorem ferarum quæ ſunt infra Foreſtam: For although that perhaps their dogs do not follow the wild beaſts out of the pourallees into the Forreſt in their chaſe after them, yet the noiſe of their running together, and the gaſing of thoſe Deer that are ſcared and ſcattered out of the pourallees into the Forreſt, will diſturb the quiet of thoſe wild beaſts which are within the Forreſt: For the nature of the wild beaſts of the Forreſt is to ſeek their food in the night time, when every body is quiet and at reſt: For then they ſee no body ſtirre up and down to trouble nor fear them, and all the day time they keep the Coverts being terrified with the noiſe and ſtirring of men, ſo that then they cannot feed quietly; and therefore hunting in the pourallees, or in any other places in the night, is inhibited by the ordinances of Henry the Second, called the Aſſiſes of Woodſtock, in the 13. Article.

Aſſiſa de Woodſtock, art. 13.

Secondly, it is not lawful for any man to Hunt in the pourallees on the Sunday, for that day is appointed for the ſervice of Almighty God, and by his Laws and appoint-

appointment, that day is to be kept holy, and not to be prophaned; for on that day all profitable business is forbidden to be used, although that the same tend to the profit and good of the Common-weal, and therefore much more all vain business and idle pastimes, as hunting and such like; and for that cause, the Laws of this Realm do not accompt Sunday to be Dies juridicus, that is to say, to be any day in any Court of Westminster, or elsewhere. Anno primo Eliz. see my L. Dyer fol. 168. pla. 17.

Thirdly, no man may hunt in the pourallees in the Fence-moneth, or as it is called, in the defence moneth, which moneth doth always begin 15. days before Midsomer, and doth end fifteen days after Midsomer, which moneth is the time of Fawning; for then the Fawns are very young, and not able to run, or to make any other shift, or else the Does are then great bellied, so that they are not able to run. And if any pourallee hunter should then chase in the pourallee, and his dogges should follow the Deer into the Forest, no doubt but that the same dogges would either destroy the Does being great with young, or the Fawns being then very young, and neither of them both able to run, or else the coursing amongst them then would be Ad magnũ terrarẽ ferarum, and for that cause the Fence-month is called Mensis vetitus, that is to say, the forbidden month, for that the laws of the Forest doth altogether forbid any hunting at all in that month, either in the Forest, or in the pourallee.

Fourthly, it is not lawful for any pourallee man to hunt in his own lands within the pourallee every day, nor any oftner then three dayes in one week, whereof the Sunday must not be any, and the reason is, because that the wild beasts in the Forest may not be disquieted, or put from their food and wonted layer, where they do use to lie at rest, with the noyse and fear of their often hunting in the pouralles: For the Laws of

of the Forest do altogether prohibit things that are Ad terrorem ferarum Forestæ domini Regis; and for that cause a man may not new erect any Mill in the Forest without a licence, because the same is Ad terrorem ferarum Forestæ.

Fiftly, it is not lawful for any pourallee man to hunt in the pourallees with any other company then with his own servants, because that the Laws of the Forest do not allow of multitudes of people to assemble themselves together only to Hunt; for that is Ad terrorem ferarum domini Regis, quæ sunt infra metas Forestæ; but yet every pourallee man that may by the Law justifie to Hunt in his own pourallees for himself, he may also justifie for his own servants to hunt with him: For to Hunt and kill Deer in his own pourallee, is a thing of profit and of pleasure also: And it is held for a learning in the Laws of this Realm, that he that hath a licence or an interest of profit, he may justifie for himself and for his servants also; But he that hath but a licence or interest of pleasure only, he cannot justifie for his servant, but only for himself; as it doth appear in 13. H. 7. note the difference: But yet he that may justifie to Hunt with his servants, he cannot justifie to Hunt with every other person.

Term. H. 13. H. 7. fol. 13. pla. 2.

Sixtly, no manner of person may Hunt within the pourallees of the Forest within forty days next after the King hath made any general hunting in any Forest adjoyning to such pourallees, because in this case the wild beasts of the forest do not come into the pourallees of their own free will, but because they are forced thereunto with strong hand, and with the noise of blowing of horns, and with a multitude of people; so that for fear of being slain they are driven to flie into the pourallees for their succour and refuge. And therefore the Laws of the Forest do give unto all those wild beasts which

which in ſuch ſort are forced to flie into the pourallees for refuge, a firm peace and free protection to remain there, during the ſpace of forty days, without any hunting, chaſing, or other harm: in which time the Law intendeth that either thoſe wild beaſts will return to the foreſt again of themſelves, or elſe that the Raungers will rechaſe them into the foreſt again with their Hounds; and therefore they have that time of liberty given by the Laws of the foreſt: And therefore in every Charter and Grant of the pourallees, that the King doth make unto any Shire or County, of ſuch lands as were diſafforeſted, the King doth always reſerve unto himſelf xl. days of free liberty for his wild beaſts of the foreſt that then were in the pourallees, to return back again into the foreſt, and alſo for his *Raungers* to rechaſe them into the foreſt again, as you may perceive by the peruſing of the Charter granted for the pourallees of the foreſt of Windſor in the County of Surrey.

Seventhly, it is not lawful for any pourallee man to hunt in the pourallees that are bordering upon any foreſt in which the King doth mind to make any general hunting after Proclamation hath been thereof made, by the ſpace of forty days; for, after ſuch Proclamation made no man ſhall hunt within ſeven miles of the borders of the Foreſt, nor within the pourallees, within forty days next before ſuch general Hunting proclaimed, becauſe that all that time the wild beaſts of the Foreſt may not by any means be diſquieted of their reſt, to the intent that the King may take the full view of them, where they do lie and make their ſecret abode.

The eight is, that no Pourallee man, nor other, hunt in the pourallee during the time that any Keeper or Foreſter is in ſerving of any Warrant within any part of the Foreſt that is nèer adjoyning upon the pourallees, nor

nor during the time that any Noble man is Hunting there, because that such Hunters in the pourallees may not disturb the game in the Forest at such times as they are hunting there, if they have notice of any such hunting, or of serving any such warrant.

For the ninth, which is against foresting, it is to be understood, that although a pourallee man may hunt and chase the wild beasts of the Forest being within the Pourallée, in some sort, as before hath been declared, yet he may not forestall nor foreset those wild beasts with Dogges, Bows, Guns, nor with any manner of Engine, to kill or stop them from their free passage to the Forest again; neither may any man make any saltaries or leaping places out of the Forest in the Pourallees, where any Deer may easily leap in, but cannot return back again, but that they shall be killed thereby for want of passage: and all such forestalling is forbidden by the Ordinances of Woodstock, articulo 13.

Assisa de Woodstock, art. 13.

And last of all, it is not lawful nor meet for any Pourallée man, nor other, to Hunt nor Chase any unseasonable Deer, as Deer of Antler in the Winter, nor Does, and such like Winter Deer in the Summer, neither in the Pourallées, nor elsewhere; for such beasts, when they are out of season, are altogether unkindly, and not meet for any man of reckoning to eat; for then their flesh is not good nor wholesome, and besides that, they are so poor, that they cannot run nor make any flight from a Dog, whereby to escape into the Forest again: and therefore the Laws of the Forest, regarding their poor and unable estate, do altogether prohibit the killing, chasing, or hunting of them in the Pourallées, or elsewhere, during the time of their unseasonableness.

But now here it may be asked me by some men, How it

it doth appear that all these orders and lessons for the pourallée man are Law, and warranted by the Laws of this Realm? unto which question or demand I answer thus.

That even from the time that pourallées had their first beginning, all these things have been taken for Law; and therefore they have been executed and used as Law, and all the Justices in Eyre of the Forest, and all those learned men and judges that have given the charge in their Iters of the Forest, for them, have always given these things in charge to be inquired of by the ministers of the Forest, as it doth appear in all the charges of the Justices in Eyre of the Forests that have been since the time of William Lord Vescye. Secondly, that the offenders and such as have been trespassors in hunting in the pourallées contrary to any of these Ordinances aforesaid, have been punished for the same, as it doth appear by the Assises and Iters of the Forest of Waltham in the County of Essex, holden in the time of Edward the Second, and Edward the Third, which are now to be seen in Master Angers Office in the Exchequer: whereby it doth appear that if these Ordinances had not been good Law, and warranted by the Laws of this Realm, then the offenders should not have been punished sharply for the breach of them, as they have been heretofore. And thirdly, these things are such injuries and annoyances to the wild beasts of the Forest, that if there were no Laws of the Forest to represse them, then the Kings Forests could not endure nor have any continuance.

Vid. the Justice-seats that have been kept for the Forest of Waltham in the time of Ed. 2. and Ed. 3.

11. How far a Pourallee man may pursue and follow after his Chase.

HOw far a pourallee man may pursue and follow after his Chase in his hunting in the pourallee, is needful here in this place to be declared; for a pourallee man may not hunt in every mans lands within the pourallee at his pleasure, but in his own lands only: and therefore if any pourallee man shall at any time find the wild beasts of the Forest in his woods or lands that he hath within the pourallee, being wandred out of the Forest into the pourallee, then they being in his own grounds, he only hath property in them, Ratione soli, against every other man, saving against the King; so that if he can slay them by chasing, without any forestalling, before that they do recover their sanctuary of peace, which is the Forest, then such wild beasts are absolutely the proper goods of such pourallee hunters, and not the Kings; neither hath the King any interest or property in them: but if such wild beasts being so chased from the pourallee, do recover the Forest, so that they be infra fines Forestæ, within the lists or bounds of the Forest, or within the third (as they call it) of the Forest, then they are absolutely the Kings wild beasts again; for so soon as ever they be within the limits and bounds of the Forest, then such wild beasts are said to be In statu quo prius, that is, in such degree as they were at the first, before that they went out of the Forest: So * that such wild beasts, when they do chance at any time to wander out of the Forest into the pourallee, yet they are in some sort the Kings wild beasts, and the King hath property in them still; for although that they be out of the Forest, and within the pourallee, yet the King hath property in them against every man, saving against the owner of those lands,

* Vide in Termino H. 13. H. 7. f. 16. pla. 14. & in Termino P. 7. H. 6. f. 36. placito 41. Quele officer del roy poit loyalment rechaser les beasts savage, que sont alles hors del Forest, tanq; al Forest le Roy.

lands in which they then are: so that every Pourallee man that may lawfully hunt in the pourallee must first make his Chase in his own pourallee, which is in his own Lands which he hath within the pourallees, where he hath lawful interest and property in the wild beasts so long as they are in his lands: and therefore if he do first begin his chase in his own ground where he hath property in those wild beasts, then by reason of that property he may pursue and follow his chase through every other mans woods and lands, either within the pourallees, or elsewhere, so that he do not enter into the Kings Forest, nor into the Forest, Chase, Park, or Warren of any other man, which are places especially priviledged by the Law, that no man may enter into but the owners thereof only; and although his dogs do by such Chase kill the wild beasts or wild beast in the woods or lands of any other man, (so that the same be not in any especial priviledged place) yet he may still follow his chase, and take and have the thing so chased and killed, by reason of the first property, in respect of the soil wherein they were when he began his chase; as it doth appear by 9. Broke, in 12. H. 8. where it is said, that if I do find a Fesant in mine own lands, and I do let my Faulcon flie at the Fesant, I may then pursue and follow my flight into any other mans land, by reason of the first property that was in me in respect of the soil, and if my Faulcon do kill the same Fesant in any other mans land, I may enter into the same land, and take and have the same Fesant by reason of my first property, and pursuit in flight with my Hawk; and the possession of my Hawk shall be said a possession in me: And in that case I shall not be punished by an action of trespass for the taking & carrying away of the Fesant, but only for the entrie into his ground, as it is there holden. And in like manner it is of all wild beasts of the forest & chase. And Mich. 12. H. 8. fol. 10. a.

if a pourallée man do begin his chase in his own lands within the pourallée after any wild beast of the Forest or Chase, and the same wild beasts do make towards the Forest, such a pourallée man may pursue and follow his chase usque ad metas Forestæ, even unto the very bounds of the Forest, but he may not enter into the Forest; for when he doth perceive that the wild beast or wild beasts have recovered themselves within the bounds of the Forest, then he must repell and call back again his dogs, or as the old Foresters do term it, he must with his horn, as loud as he can, blow a rechase, id est, repellere vel retorquere canes, that is, to call or draw back again his dogs from following of their chase any further. And if that such a pourallée man in his hunting do not presently, after that the wild beast hath recovered himself within the bounds of the Forest, repell, rebuke, and call back again his dogs from their chase, then, if the same dogs do chance to kill the wild beasts within the Forest, the owner of the same dogs is a Trespasser of the forest, and is to be punished for the offence of his dogs, although he do not come within the Forest himself, because that he did not call his dog back again: but if he had called his dog back again, and yet after such calling back of his dogs, the same dogs still following their Chase doe kill the wilde beasts within the Forest, in this case, such a pourallee Hunter is not to be punished as a Trespasser of the Forest, because he hath done his indeabour to call back again, and to restraine his dogs from their coursing in the Forest, as it doth appear in 44. E. 3. in the case of the Earle of Arundel, where it is holden, that if a man have lands sown with Corn, adjoyning unto a free Chase, or Forest, if the wild beasts do come out of the Forest or free Chase, into those lands so sown with Corn, and he that hath the lands so sown with

Hill. 43. E. 3. fol. 3. pla. 23.

with Corn, doth chase those wild beasts with his dogs, and before that those dogs do enter into the Forest or free Chase, he doth repell and call them back again, then although that the same dogs do enter in the Chase or Forest, and do there kill the wild beasts, yet he is not to be charged as a trespasser for that killing in the Forest or Chase; Ergo, if such a Hunter do not call back his dogs, before that they do enter into any Forest or Chase, if they do chase or kill any wild beast there, he is a Trespasser, and shall be charged as a trespasser for the Hunting and Chasing of his dogs therein. And therefore, by the same reason, much more shall they be accounted trespassers that do Hunt in the pourallees, and do not repell nor call back their dogs at all, but do follow them into the Forest, and there animate and incourage their dogs to Hunt and slay the wild beasts; yea, and do also carry the deer away with them, most foolishly affirming that they may lawfully do the same. And to prove the authority of this case of the Earl of Arundels, the more stronger, to be Law, It is holden in 38. E. 3. that if a man do find a Fesant in his own ground, and do there let his Faulcon flie at the same, and he flieth with the Fesant into a Warren, which is a priviledged place for birds of Warren, and there doth kill the same, yet the owner of the Faulcon, in this case, shall not have the Fesant, although that his Hawk did kill the same; but the owner of the Warren is to have it; but if such killing of the same fesant were not in a Warren or other especial priviledged place, then the Law were otherwise, as it is holden by M. Brook, in 12. Henry 8. f. 10. for then the owner of the faulcon were to have the fesant, note the difference: but yet this case doth also prove, that so soon as the fesant, which is wild of nature, was within the bounds of the Warren, the same was the owners

T. Paschæ 38. E. 3. fol. 10. b. the first Case.

Vide M. 12. H. 8. f. 12. 2.

of the Warren again; and therefore the killing of the same within the bounds of the Warren doth not gain any other man then the owner of the same any property therein; neither should the owner of the faulcon in that Case suffer his faulcon to flie into the Warren, to kill the same fesant, if he could any way let or hinder the same: but yet here note, that as well by the foresaid Case of 43.E.3. as also by the Case of 38.E.6. that if any such wild beasts be slain and killed within the meers and bounds of the forest, they do belong only unto the King, or the owners of such forests, Chases or Warrens, and not unto them that do so kill them: for if the dogs of a pourallee man do follow a deer in their chase towards the forest, and before that the same dogs can fasten upon the deer, or that the owner of the same dogs do repell them back again from their chase, the deer doth recover a common high way, or a river, which high way or river is a meer of the forest, and there being in the same meer, the dogs do fasten upon the deer and kill him; in this case, the King or the owner of the forest, is to have the deer, and not the pourallee man that was owner of the dogs, for all the meers and bounds of the forest are the Kings, and they are parcel of the forest; for by the new Ordinances of the forest made, in An.6.E.1. It is established for a Law, Quòd secundùm assisam forestæ, omnes metæ forestæ sunt integræ domino regi, that is to say, that all the meers and bounds of the forest, are wholly the Kings, although that they do stand in another mans land or soil: And therefore they are parcel of the forest; so that if any man do kill any wild beast within any high way, or river, which is a meer or boundary of the forest, he doth kill the same within the forest, for the same is parcel of the forest, for the King is to have those meers and boundaries wholly as parcel of the forest. And it doth appear in the Assises of Pickring, in An.10. E.3. that the

H.43.E.3.fo.8. pl.23. P.38.E.3.f.10.b.Case 1.

Assisa & consuetudines forestæ, An.6.E.1.art.19.

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Abbot of Whitby did kill a Hart within the river of Dervent, which was a mær, and one of the mærs of the Fozeſt of Pickring: the Abbot and his company were indicted foz the ſame, Quia ceperunt unum cervum in aqua de Dervent, quæ eſt merchia foreſtæ, & venationem illam ſecum aſportavit; and foz this fact he made his fine and ranſome, and was bound to the good abearing of the Fozeſt. Aſſiſa foreſtæ de Pickring, An. 10. E. 3. fol. 6. fol. 41.

12. When a purlieu man may follow his Chaſe into the Foreſt, and there take it, and when not.

And yet, at ſome time, and in ſome Caſes, a pourallee man may lawfully purſue and follow his chaſe into the Fozeſt oz Chaſe of the King, and there take, habe, and carry away the wild beaſt oz other thing ſo chaſed and killed within the bounds and mærs of the Fozeſt. Foz if a pourallee man do find the wild beaſts of the Fozeſt in his lands within the pourallee, and do put on his dogs after thoſe wild beaſts, and in chaſing of them towards the Fozeſt the dogs do faſten upon one of thoſe wild beaſts beſoze that he be within the bounds of the Fozeſt, and the wild beaſt by his foꝛce and ſtrength doth dꝛaw the dogs ſtill banging upon him into the Foreſt, and being a good way within the Fozeſt, the ſame dogs do kill the wild beaſt; in this Caſe, by reaſon of the firſt pꝛoperty that ſuch a pourallee man had in the wild beaſt Ratione ſoli, and alſo by the purſuit and poſſeſſion of the ſame by his Dogs, beſoze that he entred into the Fozeſt, he may follow his Chaſe into the Foreſt, and there take, habe, and carry away the ſame, becauſe he was actually poſſeſſed of the ſame wild beaſt, by his dog being his ſervant, as of his own pꝛoper goods, beſoze that the ſame wild beaſt did recober

the Sanctuary or Priviledge of the Forest again.

See the whole Case, in Termino Mich. 12. H. 8. f. 10.

But it seemeth by the Case in 12. H. 8. that if a pourallee man do begin his course, and do let slip his dogs at the wild beasts in the ground of another man within the pourallee, and not in his own ground, which is a wrong unto the owner of those grounds in the which the wild beasts were, that in that Case, if his dogs do fasten upon the wild beast before that he do get within the bounds of the Forest, and the wild beast doth draw the dogs into the Forest, and they there kill the same: in this Case, such a pourallee man may not enter into the Forest, nor have, nor take the wild beast so killed or chased, because that his first pursuit and chase began by a wrong, for that he never had any interest or property in the same wild beast Ratione soli, to make such a course: and therefore, in this Case, although that he do not come within the bounds of the Forest himself, yet he shall be accounted a Trespasser of the Forest, for that his dogs did enter into the Forest, and there killed a wild beast, himself having no lawful interest or right of chasing; for in such a Case, he cannot justifie his hunting, to say that he is a lawful pourallee man, and that he found the wild beasts in his own lands within the pouralle, &c. but the owner of the land, in the which the wild beasts were found, might have made this justification very well. And the Case that is put by M. Brooke, in 12. Henry 8. fol. 10. is, where a man doth let his Faulcon flie at a Fesant which he doth find in his own ground; and in that Case, it is said, that he may pursue his flight after the Fesant into another mans ground; and that although that his Faulcon do kill the Fesant in another mans ground, yet the owner of the Faulcon shall have the Fesant, and not the owner of the ground; in which the same is killed: and as it seemeth, the reason thereof is, because of the first pro-

See the Case in Termino H. 43. E. 3. fol. 8. P. 23. and consider well the manner of the justification of the plea, and see 38. E. 3. fo. 10. b. first Case. H. 13. H. 7. f. 16. pla. 14. P. 7. H. 6. f. 36. pla. 41.

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perty that was in him Ratione ſoli, for that he began his firſt flight at the ſame Feſant being in his own ground: but if a man do find a Feſant in another mans ground, and there do let his faulcon flie at the ſame, which faulcon doth alſo kill the feſant in another mans grounds; in this Caſe, the Law ſeemeth to be otherwiſe then in the Caſe put by M. Brooke; for in this Caſe, the Law is taken that the feſant doth of right belong to him that is owner of the ground in the which the ſame was killed; for no man ſhall take the benefit of his own wrong; and here in this Caſe, the owner of the Faulcon began his firſt flight at the Feſant by a wrong; and this may be gathered to be Law by the reaſon of the ſaid Caſe put by M. Brooke; and if any man do make a flight at a Feſant in another mans ground, and purſue the ſame until he come to his Faulcon which hath killed the Feſant in the ground of a ſecond perſon, where finding the ſame he taketh the Feſant away with him; in this caſe, if the owner of the ground in the which the Feſant was killed, do bring an action of treſpaſs againſt the owner of the faulcon, for breaking and entring into his cloſe, and for taking away of the feſant, the owner of the faulcon cannot juſtifie his entry into another mans ground to make a flight there, nor the purſuit of his flight, and taking away of the feſant, as he might have done, if he had firſt made his flight in his own ground, as in the Caſe put by M. Brooke.

13. Of the Ordinances and Laws of the purlieus, and of their firſt beginning.

The Ordinances and Laws of the pourallees may more properly be called the Laws of the foreſt; although that they chiefly reſpect diſorderly hunting and treſpaſſes that are done in the pourallees, yet the whole ſcope

scope of them tendeth only to the preservation and continuance of the Forest: and those Ordinances and Laws, for the most part, are no other but the Common Laws of this Realm, or else grounded upon the reason of the Common Law, as already before hath been declared. The first beginning of these Orders and Laws for the pourallees was in the time King H. 2. for after that he had made many great afforestations in sundry places in this Realm, and some few disafforestations, yet although that he did disafforest the places in which the wild beasts then were, he had such a special care of the wild beasts of Venery and Chase, that to the end to preserve them still, he made certain Laws and Ordinances, which have relation as well to those places so disafforested, as to the Forests themselves wherein the wild beasts are; as it doth appear by the Ordinances and Assises of Woodstock, hereafter in the * 3. part of this book declared, and since the time of King Hen. the Third, and the granting of Charta de Foresta, that all the new afforestations that were made by King Hen. the Second, King Richard the First, and King Joh. were disafforested by the perambulations, yet by reason of the great plenty and store of wild beasts both of venery and chase, that then were in every Forest within this Realm, which had used and accustomed of long time to have their haunt and laier in those places newly disafforested, it was a thing almost impossible altogether to restrain them thereof; wherefore there were then certain Officers, called Rangers, appointed to attend and look unto all those places newly disafforested (which, because of the perambulations, were then called Pourallees, after the French word) which Officers by their care and diligence did daily as much as they could restrain the wild beasts of the Forest of their repair and haunt into those Pourallees: and when by any chance the wild beasts of

the

See the Assises of H. 2. called the Assises of Woodstock.

* See before c. 17. Divis. 5. in the margin.

the Forest, either were forced or driven out of the Forest into the pourallees, or else came into the pourallees of their own free-will, the Rangers of those places were wont to cast off their Hounds in the pourallees, to drive these wild beasts back again into the Forest. And also for the better preservation of Forests, and of such wild beasts so resorting into the pourallees, these Laws and Orders before recited were first devised, and by those Officers, called the Rangers, carefully looked unto and put in execution. And so from the first beginning of pourallees, until this day, these Laws and Ordinances have been used and given in charge to be inquired of by the Justices in Eyre of the Forest at every judicial seat, where also the offenders thereof have been from time to time punished.

14. How, and where offences in the Pourallees shall be tried and punished.

And for as much as all such trespasses and offences as are done and committed within the pourallees, contrary to any of these Orders and Laws aforesaid, are accounted trespasses and offences of the Forest, for that they are injuries and wrongs done to the wild beasts of the Forest; therefore the foresaid Officers called Rangers, both by their Office and Oath, are to look unto all such things: and when they shall find or understand of any such offences and trespasses, they are as well to present the same offence, as also the offenders therein, at the next Court of Attachments which shall be holden for the same Forest next adjoyning unto such pourallees, or else at the next Court of Swanimote or Justice-seat, which shall first happen to be kept for the same Forest, to the end that all such trespassers and offenders in the pourallees, according to the quality of their

their offences may receive a lawful trial at the Court of Swanimote, before the Foresters, Verderers, Regarders, Agisters, and other Ministers of the Forest, in such sort as by the Laws and Ordinances of the Forest, for all other offences and trespasses that are committed and done within the Forest, is ordained and appointed. And after such lawfull trial and conviction had against such offenders and trespassers in the pourallees, they are to be bound with good pledges and sureties unto the good behaviour of the Forest, until the next Justice-seat, which shall be holden for the same Forests: at which time they are to be punished by the discretion of the Lord chief Justice in Eyre of the Forest, by imprisonment, ransom, or fine.

15. Of the Kings Officers in the Pourallees.

And because that the pourallees, as aforesaid, were once Forest, and in some sort is Forest still; therefore the King of necessity must have certain Officers there that may attend upon the same places, and take the charge of the preservation of the wild beasts therein: for otherwise these Laws and Orders could not be executed, and then the Forest could not endure, but would be destroyed and spoiled by the pourallees in short time: and for that cause Rangers were first appointed: for a Ranger is no Officer in the forest, but yet a chief Officer of the forest or to the forest: those that are Officers within the forest have charge of the Vert and Venison of the forest; but a Ranger that is an Officer of the forest or to the forest, but not within the forest, hath no charge of Vert but only of the Venison that cometh out of the forest into his charge, which is into the pourallee; which Venison he is to safe-conduct back again into the forest out of the pourallee: There are some forests

reſts within this Realm that had neber any enlarge-
ment by any new aſſoreſtations of any of the ſoreſaid
Kings; and thereſore thoſe Foreſts at this day habe no
Pourallees, becauſe there was not any diſaſſoreſtations
of any lands that were parcel of that Foreſt; and there-
ſore there are not any Rangers belonging to thoſe Fo-
reſts, becauſe there are no pourallees. And as it ſeem-
eth by the caſe of Anno 7. H. 6. in ſuch Foreſts where Paſchæan.7.H.
there are neither Pourallees, nor Rangers to rechaſe the 6.f.36. pl.41.
Deer and wild Beaſts that do wander out of the Foreſt
back again into the Foreſt, there the Foreſters may
follow after their Deer out of the Foreſt, and chaſe them
back again into the Foreſt: But where Pourallees and
Rangers are, there the Foreſters cannot do ſo, unleſs
that ſuch Foreſters do follow them with freſh purſuit
within their bieu: note the difference; and ſee the Hill.an.13.H.7.
Caſe of Anno 7. H. 6. aſoreſaid, and alſo 13. H.7.fo.16. f.16.p.14.

16 Of a Ranger, his Oath, Authority, and Office.

And theſe aſoreſaid Officers, called Rangers, being
Officers of the Foreſt, made and appointed by
the King, by His Letters Patents under the Great
Seal of England, to attend upon the Pourallees of the
Foreſt, for the better preſerbation of the Foreſt, and
the wild Beaſts therein; unto which Officers, to the
end that they ſhould with more care and diligence the
better diſcharge their Office in that behalf, the King
doth alſo allow unto ebery one of them a yearly fee of
xx l. or xxx l. by the year, to be paid out of the Exchequer,
and certain fee Deer, both of Red and Fallow, unto
ebery one out of the foreſt. The office of a Ranger doth
chiefly conſiſt in ranging and walking of the Pourallees,
and in ſafe conducting of the wild beaſts that he ſhall
there find, into the Foreſt again, and alſo in preſent-
ing

ing of all offenders and unlawful Hunters, and of their trespasses and offences, which they have done within the pourallees being within the liberty of the Rangers, so that the Office and Authority of a Ranger doth consist in these three things, viz.

1. Ad ambuland. quotidiè per terras deafforestatas, ad videnḋ', audiendum, & inquirendum, tam de malefactis, quam de malefactoribus in Balliva sua, that is, to walk and Range daily throughout all the pourallees, and the land disafforested, to hear, see, and inquire, as well of all offenders, as of their offences that are any way done or committed within his Range or Liberty.
2. Ad refugand' feras forestæ, tam veneris quam chaseæ, de terris deafforestatis, in terras afforestatas, which is, to walk and range the pourallees, and to safe-conduct the wild beasts out of the pourallees into the Forest again.
3. Ad præsentandum omnes transgressiones forestæ in terris deafforestatis factas, ad proximas curias illius forestæ tentas, to present all the trespasses and offences of the Forest that are committed and done by hunting in the pourallee, at the next Court of the Forest, to the end that the King may be certified what wild beasts have been killed in the pourallees.

And to the intent that every such Ranger should be the more careful and willing to execute his Office of a Rangership, according to the Laws in that behalf provided, the Laws of this Realm have appointed that every such Officer shall be sworn and take a corporal Oath upon the holy Evangelists to do the same, the tenure of which Oath is, as followeth.

The

The Oath of the Ranger of the Foreſt.

YOu ſhall ernly execute the Office of a Ranger in the pourallees of W. *upon the borders of the Kings Foreſt of* Waltham. *You ſhall rechaſe and with your hound drive back again the wild beaſts of the Foreſt, as often as they ſhall range out of the ſame Foreſt into your pourallees. You ſhall truly preſent all unlawful hunting, and hunters of wild beaſts of venery and chaſe, as well within the pourallees as within the Foreſt. And thoſe, and all other offences, you ſhall preſent at the Kings next Court of Attachments or Swanimate, which ſhall firſt happen, ſo help you God.* Here note, that in this Oath there is contained the whole Office of a Ranger.

17. Whereof called Rangers.

THis word Range, in ſome ſence doth ſignifie to walk up and down in a certain appointed order; and therefore the Regarders of the Foreſt, when that they do walk through their whole Regard, to ſee and view the treſpaſſes and offences that are done in the Foreſt, they are ſaid to make their Range, that is to ſay, their Walk, through their whole liberty, in ſuch order as by the Law they are appointed: for this word Range in French, is, Ordo, ſeries, or Striga, in Latin, which doth ſignifie an Order, a Row, or a Range: for the Frenchman doth uſe to ſay, Va de Range, which is, Incede ordine, or in ſeriem te coge, which is, go in order, or keep thy order in going: And this word Ranger or Arranger in French doth ſignifie, to range up and down in an order, or to walk up and down in a certain appointed order. And becauſe that a Ranger of the Kings foreſt is an Officer, eſpecially appointed by the King to walk the pourallees, as aforeſaid, according to the Laws and Orders thereof

thereof unto him prescribed, for the better performance whereof he is also sworn, and bound by his Oath: therefore very aptly and properly such an Officer may be called a Ranger, according to the signification of the French word, which is an Officer or Walker that doth walk the pourallees or lands disafforested, according to such orders and laws as he is appointed; and for this cause he is called a Ranger.

CHAP. XXI.

1. *Of the Courts of the Forest in general, and the Officers thereto attendant.*
2. *What a Verderer is, how made, what his Oath, what his Office.*
3. *What a Regarder is, how made, what his Oath, what his Office.*
4. *What a Forester is, how made, what his Oath, what his Office: and of the Bedle of the Forest.*

1. Of the Courts of the Forest in general, and the Officers thereto attendant.

Vid. Poph. 150. the King against Brigs.

There is also the Court of the lawing of dogs, Charta de foresta, cap. 6.

First, it is to be understood that there be three principal and chief Courts usually kept for matters of the Forest, that is to say, the Court of Attachments, the Court of Swanimote, and the high Court of the Lord Justice in Eyre of the Forest, commonly called the Justice-seat. And these three several Courts are of three several natures, as at large hereafter it shall appear: wherefore to the intent that the said Courts may the better be known every one in his own

own proper nature, I have here set them down, and plac ed each one of them in his own place and degree as they are, together with their several Authorities and proceedings, as you may see hereafter. And because the said Court of Attachments is the meanest and lowest Court of them all; see that in the said Court of Attachments the Officers there do nothing but receive the Attachments of the Foresters, and inroll them in the Rolls of the Verderers, to have them in a readiness against the time of the keeping of the Court of Swanimote, And for that the said Court of Attachments cannot determine the offence or trespass of the Forest, if the value of the same trespass be above the value of 4 d. but that the same offence and trespass, if the value be more then 4 d. must be by the said Verderors inrolled in their Roll, and so to be sent from thence to the Swanimote, to have an orderly trial of the same there according to the laws of the Forest; therefore I have placed the same court first of all, because that the greatest part of all the presentments do first begin there: and also because that when offences and trespasses of the Forest are presented by the Foresters in the said Court of Attachments before the Verderers of the Forest, and that they have entred them in the Rolls and Records of the Forest, then the same Court cannot there proceed any further therein, neither is that proceeding by them as yet any conviction against the offender, in those offences; but that he that is such a trespasser may yet traverse the same presentment that is against him, until that the same have passed the Swanimote Court of the Forest; so that such trespasses as are presented at the Court of Attachments, must of necessity proceed from thence to the Court of Swanimote, before that the offenders and trespassers may be punished, or stand convicted as guilty in Law of their offences: Therefore I

The Court of Attachments first.

The Court of Swanimote next unto it.

have placed the Court of Swanimote next unto the said Court of Attachments, as a Court that is higher than the Court of Attachments, and yet more low and inferior than the high Court of the Seat of the Lord Justice in Eire of the Forest: For when the presentments of the Courts of Attachments, as aforesaid, and also all other presentments of the Swanimote Court, have had their proceedings in the same Court, according to the Assises and Ordinances of the Forest; and that all the trespasses of the Forest are there presentat' per Forest' & duodecim Jurat' & convict' per Viridarios, as they must be of necessity by the Law; yet cannot the same Court of Swanimote then determine the same trespasses, or assess any fine for any such offence, or give judgment thereof, (any other than that the said offenders are convicted thereof, as is aforesaid:) But the same Presentments, Indictments, and Convictions, must be delivered to the Lord Chief Justice in Eyre of the Forest, at the Justice Seat, the first day of the same Seat, when they are called for, according to the Ordinance of the Forest made in Anno 34. Edw. 1. articulo 1. And according to the Assises and Customs of the Forest made in Anno 6. Edw. 1. Articulo 19. And according to the form of Charta de Foresta, Articulo 16. in these words, Et ea præsentet Viridariis provinnciarum, & cum irrotulata fuerint, & sub sigillis Viridarior' inclusa presententur capitalibus Justic. nostris de Foresta, cùm in partes illas venerint ad tenend. placita de Foresta, & coram eis terminentur: so that it doth appertain only unto the Lord Chief Justice in Eire of the Forest, at the High Court of Justice-seat, or General Sessions of the Forest, to give judgment of all offences, and to assess the fines, and to punish the offenders. And because that all the proceedings of the two other Courts are as nothing, before that they do come to the Justice-seat of the

The Attachment & Swanimote Courts are only to present Agisters, Regardets, &c. The Justice in Eire is to do nothing of himself, but upon their presentments. Bolstr. 2.p.297.

Ordinatio forestæ, Artic. 1. Assisa & consuetudines forestæ, Artic. 19. Charta de foresta, artic. 16.

The Seat of the Lord Justice in Eire of the Forest is the highest Court.

the Forest to receive their Judgment; therefore I have placed that Court last of all, as the principal head, and the most high Court of the Forest; unto which Court the Courts of Attachments and Swanimotes are but as it were two hands to deliver matters unto it, to receive Judgment thereof from thence.

But because the Verderers, Regarders, Agisters, Forresters and other Officers of the Forest are to give their personal attendance at the said Courts, and their presence is so necessary, as the due Execution of the Forest Laws, and punishment of offenders, doth for the most part wholly rely upon them, therefore it shall not be amiss (before I treat of the several Jurisdictions of the said Courts) to say somewhat of the Office of the Verderers, Regarders, and Foresters; for of the Agisters and their Office, the eleventh Chapter of this book doth before sufficiently discourse.

Note that the Justice seat may be at any place out of the Forest, Cro. 1. part 405. the King against Sir Basil Brook; but Coke saith, 'tis good *infra les doles de Forest.* Bulstr. 213.

2 What a Verderer is, how made, what his Oath, what his Office.

A Verderer is a judicial Officer of the Kings Forest, chosen by the Kings Writ in the full County of the same Shire within which the Forest is, and sworn to maintain and keep the Assises or Laws of the Forest, and also to view, receive, and inroll the Attachments and presentments of all manner of trespasses of the Forest, of Vert and of Venison. Co. 4. Inst. 292.

The definition of a Verderer.

Viridarius à Viridi, Vert or *Green-hue*, for that his Office principally is concerned in looking to the Vert or Green, and to see it be maintained, Co. 4. Inst. 292. *Verders sont ceux que devaunt gard a Vert & a Venison & font les attachiments*; saith an old Commentator on Charta de foresta, M. S. Bibliotheca, W. M.

And it is to be understood, That there are most commonly in every one of the Kings Forests within this Realm four Officers of the Forest called Verderers, (which

Verderers are Judges and ought to be by writ, Poph. 150.

(which ought to be Eſquires, Gentlemen of good account, ability and living,) which are wiſe and diſcreet men, and well learned in the Laws of the Foreſt. The Office of a Verderez is almoſt like unto the Office of a Coroner in ſome points: for as a Coroner by the Law is to view the dead body of any of his Majeſties Subjects that is ſuddenly ſlain, or found dead; and it being not known how he doth come by his death, then the Coroner is to repair to the ſame dead body upon notice thereof unto him given, to ſee and view the ſame, and there alſo to inquire by the Oath of twelve good and lawful men, upon the view of the ſame dead body, and ſuch evidences and circumſtances as can by any means be there learned, how he came to his death, and who was the occaſion thereof: Even ſo a Verderez is to view the wild Beaſts of the Foreſt; and if any of the Kings wild Beaſts of the Foreſt be found ſlain or ſore wounded, or hurt, then upon notice thereof given unto the Verderers, or unto any one of them, he ought to repair to the ſame wild Beaſt that is ſo ſlain, killed, or hurt, and there to cauſe an inquiſition to be made per quatuor villatos propinquiores Foreſtæ, to know how the ſame wild Beaſt was killed, and by whom; as it doth appear by the Aſſiſes of the Foreſt, Articulo 7. And ſo a Verderer in that reſpect is an Officer like unto a Coroner.

Aſſiſa & conſuetudines foreſtæ, artic. 7.

How a Verderor is made.

And it is to be noted, that even as a Coroner is choſen by the Kings Writ in the full County, ſo is a Verderez alſo; for when any of the Kings Verderezs of his Foreſt is dead, then upon certificate thereof made unto the King in his high Court of Chancery, that T. Bare-foot, one of the Verderezs of the Foreſt of Waltham, is dead, the King thereupon doth grant out a Writ de viridario eligendo, directed to the Sheriff of the ſame ſhire within which the Foreſt is where he is to be choſen

Verderez,

Verderor, commanding him in his full County to chuse another Verderor in the place of him that is dead, the tenor of which Writ is as followeth.

Jacobus Dei Gratiâ Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, Fidei Defensor, &c. Vic. Essex salutem. Quia Tho. Barefoot nuper unus viridarior. nostrorum Forestæ nostræ mortuus est, ut accepimus, ideo tibi præcipimus quòd si ita est, tunc in pleno com. tuo de assensu ejusdem com. loco prædict. Thomæ Barefoot eligi facias unum alium viridar. qui præstito sacram. prout moris est, extunc ea faceret & conservaret quæ ad officium viridarii pertinent in Foresta prædict. tamen eum eligi facias qui melius sciat & possit officio illi intendere, & nomen ejus nobis scire facias: Teste, &c. F.N.B. f. 164. C.

By which Writ it appeareth, That a Verderor shall be chosen in the full County, in the same manner as a Coroner is, by the freeholders. So that when the Sheriff hath received the Kings writ aforesaid for the chusing of another Verderor, and that he by vertue of the same Writ, in his full County, hath caused the freeholders there to elect a wise, discreet, sufficient, and able man, to serve in the said place of Verderor, and that the same Sheriff hath given unto him an Oath according to the tenor of his Writ; then this election of such a new Verderor, together with his name, must be certified into the Court of Chancery by the same Sheriff, in his return made of the same Writ. And in this sort a Verderor is made; and otherwise than this no man may be made a Verderor of any Forest of the Kings, as appeareth by the statute called Ordinatio Forestæ, 34 E. 1. before f. 11. b.

And if any Verderor of the Kings Forest be discharged from his Office, by false suggestion, by a Writ of the Kings, directed to the Sheriff, then the party or Verderor so discharged may come into the Chancery and there require a Commission to enquire of that suggestion, and F.N.B. f. 164. d.

to certifie that inquiry in the Chancery before the King; or the Justices of the Forest may certifie the King of that false suggestion under their seals: And if the same suggestion be found false, then the King may make a Supersedeas to the Sheriff, that he shall not remove the said Verderer, &c. And if that he be removed already, that then he shall still suffer him to use and occupy the said Office of a Verderer, as he did before.

F.N.B. f. 167. a. And if any Verderer, Forester, or any other Minister of the Forest, be compelled by the Sheriff to any Assises, Juries, or Inquests, they may have a Writ framed upon the said Statute of 34 E. 1. which gives them that exemption, directed to the Sheriff to discharge them, as it doth appear in F.N.B. fol. 167. a.

The Oath of a Verderer. Because it appears by the foresaid Writ de Viridario eligendo, that the Sheriff must give to the Verderer elected an oath (for the words of the Writ are, qui præstito sacramento, &c.) it shall be necessary to lay down the form of the said Oath. You shall truly serve our Sovereign Lord the King in the Office of a Verderor in the Forest of W. you shall, to the uttermost of your power and knowledg, do for the profit of the King, so far as it doth appertain unto you to do: you shall preserve and maintain the ancient rights and franchises of his Crown: you shall not conceal from his Majesty any rights or priviledges, nor any offence either in Vert or Venison, nor any other thing: you shall not withdraw nor abridge any defaults, but shall endeavour your self to manifest and redress the same: And if you cannot do that of your self, you shall give knowledge thereof unto the King, or unto his Justice of the Forest: you shall deal indifferently with all the Kings liege people: you shall execute the Laws of the Forest, and do equal right and justice as well unto the poor as to the rich, in that appertaineth unto your Office: you shall not oppress any person by colour thereof, for any reward,

ward, favour, or malice: All these things you shall to the uttermost of your power observe and keep; So help you God.

And now concerning the last point, which is the Office of a Verderer, and what the Office of a Verderer is, and in what things the same doth chiefly consist; it is therefore to be understood, that the whole Office of a Verderer doth consist in these six things; that is to say; *The Office of a Verderer*

Ad
1 Videndum.
2 Inquirendum.
3 Recipiendum.
4 Imbreviandum.
5 Judicandum.
6 Certificandum.

And as concerning the first point, which is, Ad videndum, to see and to view, It is to be noted, that a Verderer ought to view the Wert and Venison of the forest, as it appeareth in Assisa Forestæ, Articulo 3. in these words, Si quis inventus fuerit extra dominicum boscum & infra rewardum prosternens quercum sine visu aut liberatione Forestarii aut Viridarii, debet attachiari per quatuor plegios, & per visum Viridar. debet quercus appreciari, & in Rotulo Forestar. & Viridarior. nomina pleg. imbreviari: By which Article it is proved, that if an oak, being ober Wert within the forest, be felled or cut down out of the Kings demesne woods, the same oak is to be apprised by the view of the Verderers. And also as to the fourth point of the office of a Verderer, which is, ad imbreviand' to inroll, It is also there provided that the Verderers ought to inroll their apprisement and view in their roll. Assisa forestæ, Artic. 3.

And it doth also appear in Assisa Forestæ, Articulo 21. that the Verderers of the forest ought to take inquisitions of matters of the Forest, and of trespasses of the Fo- Assisa forestæ, Artic. 21.

rest, as well of Vert as of Venison; and those inquisitions they must inroll in their roll likewise, and also certifie the same before the Lord Justice in Eire of the Forest at his next coming into the Forest to hold the general sessions of the Forest. And it doth also appear by Charta de Foresta, c. 8. that the office of a Verderer is, Ad vicend. attachiamenta de Foresta tam de viridi quam de venatione per præsentationem ipsor. Forestarior. So that it doth thereby appear, that the office of a Verderer is both to view the attachments of the Foresters, and also to receive their attachments, and to inroll them in the Rolls of the Verderers; and then it followeth, that all those Rolls of the Verderers must be by the said Verderers certified to the Justices of the Forest at their coming into the same Forest to hold their general Sessions of the Forest, as it doth appear in Assisa Forestæ, Articulo 21.

Charta de foresta, cap. 8.

Assisa forestæ, Artic. 21.

And also the Verderers Office in some cases is to judge of offences and trespasses that are committed and done within the Forest, as of trespasses in Vert, the value thereof being under the sum of 4 d. And it doth appear by the Assises of Lancaster and Pickring, that the entry of the pleas of the Forest are thus, præsentatum per Forestarios & convictum per Viridarios: Whereby it doth appear, that the Office of a Verderer is a judicial Place or Office. And thus much concerning the Office of a Verderer.

Ass. Lanc. fo. 11.

See Cap. 13. Divis. 5. & Cap. 22. Divis. 2. & 6.

3 What a Regarder is, how made, what his Oath, what his Office.

Definition of a Regarder.

A Regarder is an Officer of the Kings Forest that is sworn to make the Regard of the Forest as the same Regard hath been used to be made in former time: And also

also to view and inquire of all offences of the Forest, as well of Vert as of Venison, and of all concealments of any offences or defaults of the Foresters, and of all other Officers of the Kings Forest, concerning the execution of their Offices. And this is the definition of a Regarder of the Forest.

Regardours sonceux que ailont a veire & enquere per la Foreſt de meſons leves & de tre arre en le foreſt ſans congie, ſaith the Commentator, ubi ſupra.

Now it is to be seen how a Regarder of the Forest is made. And for that, it is to be understood, that a Regarder of the Forest may be made by the King himself, by his Letters Patents, or by any one of the Kings Justices of the forest at his discretion in the geueral Eire of the Forest, or at such time as the Regard of the Forest is to be made by vertue of the Kings Writ, which shall be directed to the Sheriff of the same County, commanding him to summon the whole Regard of the Forest, and to make the regard of the forest as they have been accustomed to do. And then if any of the Regarders of the same forest be sick or dead, so that because there are not the whole number of twelve Regarders, the Regard cannot be made, that then the same Sheriff shall chuse other Regarders that are meet men to serve in their places by vertue of the same Writ, in his full County; the tenor of which writ is as followeth: Jacobus Dei Gratiâ Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, Fidei Defenſo, &c. Nic. Eſſex, ſalutem: Præcipimus tibi quòd ſine dilatione convenire facias omnes Foreſtarios & Regardatores ad regardum faciendum in Balliva tua ante adventum Juſticiariorum noſtrorum de Foreſta: Et locis Regardatorum qui mortui ſunt, aut infirmi, alios eligi facias, Ita quod duodecem ſint in Foreſta, & nomina eorum imbreviantur: Et Foreſtarii dictos duodecim Milites electos ducent per totam Ballivam ſuam ad vidend. omnes tranſgreſſiones quæ exprimuntur in Script. Capitulor. quæ tibi mittimus, & quòd hoc non omittas pro aliqua re: Et quòd dicti Milites jurent quòd facient Regardum ſicut ſolet & debet fieri: Et quòd

How a Regarder is made.

Co. 4. Inſt. 291.

The Writ to the Sheriff. See the Writ otherwiſe recited Co. 4. Inſt. 292.

quod ibunt sicut Forestarii eos ducent ad prædictam Forestam videndam: Et si Forestarii noluerint vel nescierint eos ducere, vel aliquod forisfact. voluerint concellare, ipsi milites non omittent propter illos quin forisfactum illud videant, & imbreviari faciant: Et hoc pro nulla re dimittant. Et quod regardum illud fiat citra tale Festum, Teste, &c.

Out of this Case we do observe six Conclusions.

1 That the Law of the Forest is allowed, and bounded by the Common Laws of this Realm; and therefore it is necessary that the Judges should know, and be learned in the same.

2 That though the Verderors be Judges of the Swanimote, and the Steward but a Minister, yet the Presentment in that Court is aswell by them, as Verderors, as by Foresters, or Keepers, Regarders, and Agisters, by the Law of the Forest.

3 That a Forester or Keeper may arrest any man that kills or chaseth any Deer within the Forest, when he is taken with the manner within the Forest, or if the offender be indicted. But then it is demanded, What if a man be so imprisoned, and after offer sufficient pledges, and they are not taken, what remedy for the party, seeing there are very seldome Justice-seats for Forests holden? The Answer is, that in the Term time he may have ex merito Justitiæ a Habeas Corpus out of the Kings Bench; or if he have priviledge, out of the Court of Common Pleas, or of the Exchequer, or out of the Chancery, without any priviledge, either in the Term time, or out of the Term in time of Vacation, and upon the Writ of the Writ he may be bailed to appear at the next Eire to be holden for the Forest, &c. and may also be bailed by force of a Writ De homine replegiando, directed Custod. Forestæ, if he be arrested by the Officers of the Forest for hunting, &c. whereof he

stands

ſtands indicted or preſented, taken with the manner, he finding twelve pledges; but if he be adjudged by the Juſtices in Eire, and impriſoned, he cannot be bailed by that Writ De homine replegiando, directed Cuſtod. Foreſtæ, &c. and if he be injuſtly proceeded withal there, he hath remedy by Law, as hereafter, when we treat of the Juſtice ſeat, ſhall be declared. And it is to be obſerved, that there is a diverſity between the Writ De homine replegiando, directed to the Sheriff; for he is reſtrained by the Statute of W. 1. cap. 15. to replevy any man impriſoned for the Forreſt, being taken with the manner, or indicted; but this Statute extends not to the Writ De homine replegiando, directed Cuſtod. Foreſtæ, &c.

And it is to be underſtood, that in times paſt, when the Forreſt Laws were carefully put in execution, then the general Seſſions of the Forreſt, called the Seat of the Lord Juſtice in Eire of the Forreſt, was holden and kept every third year: And alſo every third year the Regarders of the forreſt did make their regard of the forreſt: And now at this day, always before that the Lord Juſtice in Eire of the forreſt doth hold his general Seſſions of the forreſt, he doth cauſe the Writ aforeſaid to be made and ſent to the Sheriff of the ſame ſhire where the forreſt is, in which the Juſtice ſeat for the Forreſt ſhall be kept, together with a brief remembrance or abſtract of all ſuch matters as the Regarders of the Forreſt ſhall enquire of: By virtue of which Writ the ſame Sheriff doth cauſe all the forreſters of the ſame forreſt, and alſo all the Regarders, to meet together at a certain day and place which the Sheriff ſhall unto them aſſign for that purpoſe; at which day and place ſo appointed by the ſame Sheriff, upon the appearance of the ſaid Forreſters and Regarders, the Sheriff doth declare unto them the tenor of his writ, and alſo doth give unto them a charge to

It cannot be kept oftner then every third year Co. 4. Inſt. 291.

to inquire of all such matters as are contained in the said abstract. At which time of apparance, if any of the said regarders be dead or sick, so that there be not the full number of twelve regarders, to make the regard of the Forest: then the said Sheriff, shall according to his said writ, in his full County of the Shire, chuse other regarders, and cause them to serve in their places, and so make up the number of twelve regarders: and in such sort regarders are made.

Ordinatio Forestæ, an 34. E 1

Also it appeareth by the Statute of Ordinatio Forestæ made in Anno 34. E. 1. before, fol. 11. That if any of the Forresters, Regarders, or other ministers of the Forest be dead, or by sickness, or any other means, be let or hindered, so that they cannot be at the Court of Swanimote; because that the absence of such Officers or Ministers should not be any hinderance of the proceeding of the Court of Swanimote, then the Lord chief Justice of the Forest, or his Lieutenant, incontinently shall chuse and appoint other Regarders in their places, so that the Indictments in the Swanimote may be made and done by all the Officers of the Forest, according to the order set down and appointed by the said Statute called Ordinatio Forestæ. And such electing and appointing of Regarders at the Swanimote is done but as it were of necessity to make up the full number of twelve Regarders to serve for the place at that time. And such Regarders as be dead and others chosen in such manner by the Lord chief Justice in Eyre of the Forest, or his Lieutenant, in their places, shall remain Regarders still: But the Regarders that are chosen and appointed, as aforesaid, to serve in the places of others that then were sick or absent upon some especial business, are Regarders Nisi pro hac vice tantùm, as it doth appear by 9. Hesket, fol. 24. b. For (saith he) they are Officers but to serve the Court for that time only.

Hesket, fol. 24.

I

I do find by the Laws and Customs of the Forest, that there may be three sorts of Regarders of the Forest, which are as followeth:

1. First, there is one sort of Regarders made by the King himself by his Letters Patents, to whom the King doth grant the said Office sometimes for term of life, sometimes to him and to his heirs, to be one of the Kings Regarders of such a Forest. Co. 4. Inst. 291.

2. Secondly, there is another sort of Regarders, that are made by the Lord chief Justice in Eyre of the Forest, or by the Kings writ to the Sheriff, as hath been shewed already before: And such Regarders are Officers of the Forest but durante bene placito, that is to say, during the Kings pleasure. Co. 4. Inst. 291.

3. Thirdly, there is another sort of Regarders, that are made Regarders for the present service of the Court of Swanimote, or to serve at some other time in the absence of some of the Regarders that are sick, or otherwise not able to serve at that time: and such Regarders are Officers Nisi pro hac vice tantùm. And thus much concerning Regarders, and how he is made a Regarder of the Forest. Co. 4. Inst. 291.

It seemeth by the Laws of Canutus the Dane King, Canon the 2. that in his time there were certain persons that did execute the very same Office that the Regarders do now at this day; and then there were 16. of them, they were called Mediocres homines, but the Danes did call them (Yong men.) Hi curiam & onus tum viridis tum veneris suscipiant. But of late, such Officers were clean worn out of use in most Forests: for it seemeth that in the time of King H. the second there were no Regarders left in any Forest, and then the Forresters and Woodmen did take no good regard to the Forests, and most especially the woodmen, whereby the Kings woods were greatly destroyed, which was an especial Canutus, Canon 2.

cause

cause of the decay of venison: and because that the said King Hen. 2. would have his forests the better kept and looked unto, he did ordain that certain Regarders should be appointed in every forest throughout his whole Realm, to survey the forests, as it doth appear by the Assises of the forest made in his time: where he doth say as followeth, Item dominus Rex præcipit quòd in quolibet comitatu in quo habet venationem, ponantur duodecim Milites ad custodiendum Venationem suam & viridem in Foresta: Et quatuor Milites ponantur ad agistandum boscos suos. And these Knights for the time that they are Officers of the forest they are called Regarders, taking the name of Regarders of the effect of their Office, because they do as it were agere curam custodiendi viridis & veneris, that is, that they must always regard the safe keeping and preserving of the Kings Vert and Venison in his Forest. And so it seemeth that at that time no man was called to the place of a Regarder but he that was a Knight. But now at this day other good and lawful men which are not Knights are chosen to be Regarders of the Kings Forest: which Officer of a Regarder is an Officer of the Forest appointed by the King to see the preservation of Vert and Venison in the Kings Forest, and also to survey all other Officers of the Forest. And also it appeareth by the Assises of the Forest domini Willielmi Veysey made in the fifteenth year of the reign of King Edward the First, that it was established there as a law, that there should not be any more than twelve Regarders in a Forest: where he doth say, Quia evidenter constat Justiciario Itinere suo, quòd tam magna oneratio regardatorum est in Foresta prædicta quòd non est sustinenda propter magnum domini Regis dampnum, Provisum est, quòd de cætero in Foresta non sint nisi tantum dict' duodecim regardatores, Et quòd illi Regardatores faciant regar-

Assisa forestæ, H. 2.

Assisa domini Willielmi Veysey, an. 15. E. 1.

regardum per totam Foreſtam quoties Aſſiſa Foreſtæ voluerit, &c.

And it is to be noted, that in every Foreſt of the Kings, or in the greateſt part of them, there are certain woods that are the Kings own demeaſn woods belonging to the Crown, and the King hath the regard of all the woods and waſte grounds and other lands which are afforeſted and within the bounds and limits of the Foreſt, as well thoſe that are not the Kings own woods, as thoſe that are the Kings own woods. And ſometimes it falleth out that there are ſome woods that be within the bounds and limits of the Foreſt, and yet they are no part of the Foreſt, as in times paſt Wallwood in Eſſex was: for the ſame was within the Foreſt of Waltham; and yet not any part of the Foreſt, nor within the regard of the Foreſt. But all ſuch woods and lands as are parcel of the Foreſt, the ſame is within the regard. And all ſuch lands as are within the bounds of the Foreſt, and yet not any part of the Foreſt, the ſame is out of the regard of the Foreſt: and this is the meaning of the Aſſiſes of the Foreſt, Articulo 3. and 4. where the words are, Si quis inventus fuerit extra dominicum boſcum infra rewardum, &c. and ſo note the difference infra rewardum Foreſtæ, and extra rewardum Foreſtæ. See before, fol. 58. The difference infra rewardum, & Extra rewardum.

It is alſo to be noted, that in the making of the regard of the Foreſt, there are divers Officers beſides the Regarders to be imployed; as the Foreſters, Woodwards, and other perſons which be owners of the woods and lands within the ſame regard of the Foreſt. And if any man habe a regard within the Kings Foreſt, belonging to him of inheritance, and hath thereof certain Foreſters of fee belonging to the ſame: then in that caſe the Foreſters and Regarders of any other regard cannot enter in there to do any thing, becauſe that the ſame is out of their charge, and within the charge of others: but A regard of inheriance.

but yet nevertheleſs, in that caſe the chief Warden of the Foreſt, together with the Foreſters and Regarders, may go thither to ſurvey the ſame, and to make the regard of the ſame, as it doth appear by the Aſſiſes of the foreſt of H. 2. where he doth ſay, Quòd omnes illi qui habent boſcos infra metas Foreſtæ ponant idoneos Foreſtarios in boſcis eorum de quibus, &c. Whereby it appeareth that the foreſters of the King may lawfully ſurvey all other foreſters, and ſo it is of the Regarders of the King: for they ſhall ſurvey all other Regarders being within the bounds and limits of the Kings foreſt, although that there be ſome particular Officers for that place. And note, that no man may have Regarders for any foreſt, but the King only, (except it be by the eſpecial grant of the King:) Neither may any man take upon him the Office of a Regarder of the Kings foreſt, but he that hath lawful title to the ſame.

Aſſiſa foreſtæ, H. 2.

Vid. Treherne, in his reading, fo. 17.

And now, foraſmuch as it appeareth by the writ aforeſaid, directed to the Sheriff to chuſe new Regarders in the place of ſuch as are dead, that the ſame Sheriff according to his writ muſt give unto ſuch Regarders as he ſhall chuſe in their places, an Oath (for the words of the writ are theſe, Et dicti Milites Jurent quòd facient regardum ſicut ſolet & debet fieri:) Now therefore it is neceſſary to ſee what the Oath of a Regarder is. And to the end that every ſuch Officer may the better know his Oath, and alſo his Office, I have ſet down the ſame here, which is as followeth:

A Regarder muſt be ſworn.

The Oath of a Regarder.

You ſhall truly ſerve our Sovereign Lord the King in the Office of a Regarder of the Foreſt of *Waltham*: you ſhall make the Regard of the ſame Foreſt in ſuch manner as the ſame hath been accuſtomed to be made: you ſhall range throughout the whole Foreſt, and through every Bailiwick of the ſame, as the Foreſters there ſhall lead you

you, to view the ſame Foreſt: And if the Foreſters will not, or do not know how to lead you to make the Regard or Range of the Foreſt, or that they will conceal from you any thing that is forfeited to the King, you your ſelves ſhall not let for any thing, but you ſhall ſee the ſame forfeiture, and cauſe the ſame to be inrolled in your roll: you ſhall inquire of all waſtes, purpreſtures, and aſſarts of the foreſt: and alſo of concealments of any offence or treſpaſs in the Foreſt, either in Vert or Veniſon, by any Officer of the ſame Foreſt. And all theſe things you ſhall to the uttermoſt of your power do, So help you God.

The Office of a Regarder.

Now it is neceſſary to ſee what is the Office and duty of a Regarder, and how he ought to behave himſelf in the execution of his Office: and therefore it is to be noted, that the words of Charta de Foreſt' Artic. 15. are, Regardatores noſtri eant per Foreſtam ad faciendum regardum, &c. And alſo it appeareth by the aſſiſes of the foreſt of H. 2. that the regard of the foreſt ought to be made by the regarders, foreſters, and woodwards, where it is ſaid, Milites, Foreſtarii, & Woodwardi debent intentè inquirere in Itinere ſuo quis habuerit aliquod ingenium ad malefaciendum domino regi in feris ſuis: and ſuch Knights or Regarders were ordained at the firſt to controul the other Officers of the foreſt, as is aforeſaid.

Co. 4. Inſt. 291.

Aſſiſa foreſtæ, H. 2.

See the next Diviſion of this Chapter towards the latter end.

Alſo the Regarders of the foreſt ſhall ſee and inquire if any ſurcharge of the foreſt be made by the foreſters of the foreſt: and they ſhall aſſign and appoint ſo many foreſters in the foreſt as they ſhall think meet and convenient to keep the foreſt.

Alſo the Regarders muſt go through the whole foreſt every third year to make their regard, and to ſee and inquire of all the offences of the foreſt in Vert or Veniſon, and of all concealments of ſuch offences by any officer of the foreſt; which regard or going through the foreſt

in antient time was called Visitatio nemorum. Also the Regarders shall go through all the forest with the foresters and woodwards, to survey all the assarts, wastes, and purprestures of the forest, and all other defaults that have been made, and as well those that be antient assarts, wastes, or prestures, as those that have been made since the last regard, and esteem them by the number of acres: and also to inquire who hath made any such assarts, wastes, or purprestures, or any other such defaults: and who doth hold the land where any such tresspasses of the forest were made or done: and if such land be sown with corn, then whose corn the same is, and how often the same hath been sown so with corn since that any such assarts, waste, or purprestures hath been made in the same: and also how much the same is worth to be sold: and in whose fee the same is: and to what Town the same doth belong: and the said regarders shall write the antient assarts, wastes, and purprestures, and such other defaults in a roll by themselves: and all such as have been newly made since the last regard of the Forest was made, they shall write them in another roll by themselves: and if the Foresters will not go with the said regarders, nor lead them to the same place where such defaults are, then the regarders may go thither themselves, and there view and inquire of such defaults and all other that they can learn of.

Also the regarders of the Forest shall survey all the old purprestures, and new, that have been made within the Forest, and value them severally by themselves, and to set down the same in the rolls of the Forest: and in what place the same purprestures is so made, whersoever it be, as in woods, plains, heaths, waters, or in land, stagnes, hedges or ditches, or in any other place of the Forest: and all such defaults shall be written in a roll by themselves.

Also

Also the said regarders of the Forest shall survey all the woods of the Forest that are wasted, as well those that are antient, as those that are new, which have been made since the second year of King Edward the First.

Also the regarders of the Kings Forest shall see and view all the Kings demesne lands and woods: & also all manner of trees that have been felled or cut down within any of the Kings demesne lands or woods, as the felling of Oaks or any other great timber since the last regard: and upon such inquiry and view thereof made, they shall certifie the number of such trees, the damage and hurt that the same is to the Kings woods or lands: and in like manner they shall do of all manner of lopping of trees, and destruction of any under-woods.

Also the regarders shall survey and view all the Kings demesne hedges, for the fencing in of his lands & woods: and whether they be made or maintained and kept as they ought to be, or not: and if that they be not so maintained and kept, then in whose default the same is that they be not so kept as they ought to be, and what damage to the King the same is that the same is not fenced: and whether by reason that the same land or wood is not fenced as it should be, the same be suffered to lye open and made common, yea or not.

* Also the regarders of the Kings Forest shall see and survey all the Eyries of Hawks in whatsoever woods they be, and who doth take them, and who ought by the Law to have them: and they shall thereof make certificat accordingly.

Also the regarders of the Kings Forest shall survey and see all the Forges and Mines, for the finding of any kind of metal, in what fee soever they be within the Forest, or within the Kings demesne woods or lands being within the Forest or without: and what rents and customs they pay for the same, and to whom: also they

shall see and view all ports and creeks of the sea, where any Ships or Boats do or may arrive to carry any timber, wood, or underwoods out of the Forest, and who doth occupy them: and by whom they are brought thither: and in whose see the same is done.

Also the Regarders of the Forest shall inquire who hath or doth keep any bow and arrows in their houses, or cross-bows, guns, hounds, or braches, or any other engins, to hunt, or to destroy the Kings wild beasts and game of the Forest with.

See before ca. 16. divis. 7. See before ca. 17. divis. 3.

And, when the Regarders of the Forest have made surbey, view, and inquiry of all such matters as by their Oath and Office they ought to do, as is aforesaid, they shall write the same fair in a roll, and bring it to the Court of Swanimote, or to the Court of Attachments, where all the Officers of the Forest ought to assemble themselves together every forty days: and all such matters as are so found by the Regarders in their range through the Forest, the same shall be there affirmed by the said Regarders by their hands and seals, which regarders shall also present the same under their hands and seals unto the Lord Justice in Eyre of the Forest, at the next general Eyre or Sessions of the Forest.

The Eyre, general Sessions of the Forest, or Justice-seat, is to be holden and kept every third year; and of necessity before that any such Sessions or Justice-seat can be holden, the regarders of the Forest must make their regard: and this making of the regard must be done by the Kings writ, as it doth appear by the writ aforesaid: whereby it is to be noted, that the Foresters and regarders cannot make the regard of the Forest of their own authority, without the Kings writ for the same purpose.

The words of Charta de Foresta are, Regardatores nostri eant per Forestam, that is to say, the Kings regarders must

must go through the whole Forest of the King: whereby it is especially to be noted, that the regarders may not do or certifie any thing concerning their office, but that they must first view the same; and for that cause the words are, eant per Forestam, that is, that they must range over all the Forest, and through every bailiwick of the same, to see and inquire of the trespasses and offences of the Forest.

The words of the Statute are further, Ad faciendum Regardum. Here in these words is most plainly shewed the cause why the said regarders must go through the Forest of the King, which is, ad faciendum Regardum, to make their regard: for in these words, ad faciendum Regardum, is comprehended the whole Office of a regarder, which doth consist in these four things, that is to say,

Ad { Videndum, Inquirendum, Imbreviandum, Certificandum.

1. And now as concerning the first of them, which is ad Videndum, to see the offences and trespasses of the Forest, and to see what Officers of the Forest have executed and done their office as they ought to do: it is to be noted that the regarders of the Forest ought not to certifie any thing but upon their view, as it shall appear hereafter in the fourth point, which is, to certifie.

2. The second is, ad Inquirendum, to inquire: so that the regarders ought to range throughout all the Forest, not only to see and view all the trespasses and defaults of the Forest, but also to inquire out the certainty of every such trespasse, and to learn the truth of all such matters as shall be delibered them in charge, as is aforesaid.

3. The third point is, ad Imbreviandū, which is, to in-

rol their view and inquisition that they have made: so that after they have gone throughout all the Forest, and have viewed the trespasses and defaults of the Forest, and that they have learned & inquired out the truth of them in every thing according to their charge given them, as is aforesaid, then they must inrol the same, that is, they must cause all those defaults that they do so find in their range through the Forest to be fair written in a parchment roll; in which inrolling they must observe these four things, that is to say,

1. What the offence is,
2. When the same was done,
3. Where the same was done,
4. Who did the offence.

4. The fourth point is, ad Certificandum, which is, to certifie that which they have done: so that when they have gone throughout all the Forest, and have made their view and inquiry of all the defaults of the Forest, and that they have also inrolled them in their roll: yet there can be no execution nor punishment done to the offenders or doers of those trespasses until such time that the same regarders have made certificat thereof unto the Lord chief Justice in Eyre of the Forest at the Justice-seat: and yet before that they do make such certificate to the Lord chief Justice in Eyre of the Forest of their inquisition, they must present the same inquisition at the Swanimote before the other Officers of the Forest, to the intent that the offenders thereof may be there indicted of the same offences, according to the Ordinance of the Forest made, in 34. E. 1. For otherwise, if the same be certified to the Lord Justice in Eyre before that the offenders be thereof indicted at the next Swanimote, then the offenders may traverse ꝑ same presentment or certificat, because that the same is not Presentat' per forestarios & duodecim Juratores & convict' per Viridarios, &c.

Ordinatio Forestæ, 34. Ed. 1.

But

But now it is neceſſary, here in this place, to ſpeak ſomthing concerning the manner of the ſame certificat: and therefore firſt of all it is to be underſtood, that in this certificat there are two things more eſpecially to be obſerved, that is to ſay, The manner of the Regarders certificat.

1. The number of the Regarders that muſt certifie the ſame. Aſſi. a foreſtæ, H. 2.

2. That they do certifie the ſame upon their biew: and not otherwiſe.

It hath been ſhewed already before, that by the Laws and Aſſiſes of the Foreſt, made in the time of King H. 2. that of neceſſity there muſt be twelve Regarders in every Foreſt: and it doth alſo appear by the writ aforeſaid, that if any of thoſe twelve regarders be dead or ſick, there muſt be others choſen in their places to ſerve: ſo that of neceſſity there muſt be the whole number of twelve regarders in every Foreſt, or elſe they cannot make regard of the Foreſt, nor make any certificat thereof: for if the certificat of their inquiſition be made by 11. of the regarders of the Foreſt, then that certificat is not a ſufficient certificat to charge any offender to anſwer thereunto, for as much as it doth appear by matter of record, that the ſame certificat was not made by all the regarders of the Foreſt: for it muſt be intended that there be always twelve regarders, and the certificat of their inquiſition muſt be made by all the regarders, that is to ſay, by 12. regarders. And thus much concerning the number of the regarders that muſt certifie. Vid. Maſter Hesker, in his reading, fol. 25.

Now concerning the certifying of their inquiſition upon their own biew: it is to be underſtood, that if it do not appear in their certificat before the Lord chief Juſtice of the Foreſt, that the regarders did range and go through all the Foreſt, to ſee and biew the Foreſt, and the offences and treſpaſſes of the Foreſt which they do certifie: then that certificat or preſentment (although M. Hesker, f. 25.

that they as Regarders of the Forest do certifie their presentment of an offence of the Forest within their charge) is not good, neither shall the offender or doer of such a trespasse be impeached upon that presentment, but the Regarders shall be amerced for their insufficient certificat: for in this case their certificat is like to the return of the Sheriff in an action of waste, where the Sheriff doth leave out of his return (these words) Accessi ad locum vastatum, ut patet in An. 34. H. 6. And also it is like to the presentment of the Coroner that doth not make mention that the inquisition of the Coroner was taken super visum corporis. But if in the certificat of the Regarders mention be made of their perambulation through the Forest, and view of the trespasses that they do present or certifie, whereas in the very truth they did not perambulate nor view the same, yet ỳ presentment and certificat of any such offences as they shall so certifie is good and sufficient in Law; for a man cannot by the Law traverse the return or certificat of an Officer that is sworn. But here it doth appear that the office and duty of a Regarder is, to go and view the offences and trespasses of the Forest, and they must also certifie their view: & as it is not sufficient for one or two of them to view the same, but they must all view the Forest, and the offences or trespasses that are done in the Forest, even so they must all certifie the same as their verdict or presentment: for as a Jury at the Common Law, if 11. of them be agreed of their verdict, and they do give a verdict, and one of them will not agree to it, then their verdict is no verdict at all in Law: so it is, if 11. of the Regarders do certifie, and the twelfth will not certifie, the certificat of the other 11. is void and no certificat at all, forasmuch as it doth appear by matter of Record, that their certificat was not made by all the Regarders, as by Law it ought to be. And thus much concerning the second point,

Vid. the case, 34 H. 6.

that

that the Regarders must make mention in their certificat, that the same was made and done upon their own view, that is, upon all their views.

You have seen that by the letter of the statute, in these words, Regardatores nostri eant per forestam, It is ordained and appointed that the Regarders shall go throughout all the Forest: and then afterwards in these words, Ad faciendum Regardum, It is shewed and declared to what end, or for what cause they ought to go through the Forest, which is, to make their Regard of the Forest: and afterwards the letter is further, Sicut fieri consuevit tempore primæ Coronationis Regis H. avi nostri, & non aliter: In which words it is plainly set down and declared unto us, how and in what manner the Regarders shall make their regard of the Forest, which is, according to the assises and customs of the Forest used in the time of King H. 2. so that this branch of the said Statute doth not hereby ordain or appoint any new thing that was new before: but this branch is made for an affirmation of the Law and usage of the Forest that was used in the time of King H. 2.

Law and usage of the Forest in the time of H. 2. in making the regard.

Now therefore it is necessary here in this place to shew how and in what manner the law and usage of the Forest was at that time used in making of the regard of the Forest: for the declaration whereof it is to be understood, that the inquiry and presentment of all the articles aforesaid, which are to be inquired of by the Regarders of the Forest, the same shall be inquired of as they were wont to be inquired of at the time of the Coronation of King H. 2. and that is every third year, as it doth appear in the assises of King H. 2. and then the same regard is to be made but only within the bounds of the Forest: for the said Regarders ought not to inquire nor to present any thing that is made or done out of the bounds of the Forest, nor yet out of the precinct of the regard within the

Assi. forestæ H. 2. c. 10. & 17.

the Foreſt, as it doth appear in the ſame aſſiſes of H.2.cap.10.& 17. For it is there written that thoſe that have woods out of the regard of the Foreſt, where the wild beaſts of the King have their haunt, peace, or reſt: or any other man that hath land or woods within the Foreſt, and hath alſo this priviledge that thoſe lands and woods ſhall be out of the regard of the Foreſt, and that the ſame ſhall not be impeached for any cauſe: yet in that caſe he or they that have ſuch a priviledge, ought to have a Woodward there to keep his woods; which Woodward muſt alſo be ſworn to the Aſſiſes of the Foreſt, that is, for the preſervation of Vert and Venison, as it doth appear by the ſame Aſſiſes of H. 2. And if the Regarders do inquire or make any preſentment of any thing that is done in any ſuch place priviledged, as is aforeſaid: then that preſentment may be aboided by the plea of the party, by pleading of that matter: for the party ſhall never be puniſhed upon ſuch a preſentment, if the very truth of the matter do appear of Record unto the High Court of the Lord Juſtice in Eyre of the Foreſt.

Aſſiſa foreſtæ H.2. Vid. Maſter Hesket, f. 26

And the ſame Law is alſo, if the Regarders of the Foreſt will make preſentment of any article that is not ſpecified in dictis capitulis de regardo fiendo (which is always ſent to the Sheriff, together with the writ, when the regard is to be made, as aforeſaid:) as if they do preſent, that I. S. hath agiſted his woods or his demeſne lands, before that the demeſne hedge-rows of the King within the Foreſt be agiſted: or that he hath taken any pawnage contrary to the Aſſiſes of the Foreſt: then that preſentment is void without any plea, if that it do appear unto the Court by matter of Record compriſed within the ſame preſentment, that the thing of the which they have made their preſentment is not any matter whereof they had charge given them to inquire, or to preſent.

Preſentment by the regard without authority, is void.

And

And if the regard of the Foreſt be made by the Regarders that are elected by writ, and yet they have not any writ to make their regard when they do make the ſame, but they do make their regard of the Foreſt of themſelves voluntarily, within the time of 3. years, that is to ſay, every year: that regard, and alſo the preſentments made by the ſame regard againſt any perſon are alſo void: and the party againſt whom any ſuch preſentment is made, may diſcharge himſelf of that preſentment by plea.

But ſuch a preſentment and inquiry made by the Regarders which were once elected and choſen, although that they do make their regard every fourth year, or every fifth year, it is good and ſufficient in law, and the ſame ſhall bind the party to the puniſhment, notwithſtanding that every ſuch preſentment and regard by them made was not by a commandment directed to the Sheriff as aforeſaid: for when the Regarders are once elected by writ, and ſworn, then they may hold their regard according to the aſſiſes of the Foreſt, that is to ſay, every third year ex officio, without any new writ, precept, or commandment. But if any of them be dead, ſo that there are not the whole number of xij. Regarders living, then they ought to have a writ, as aforeſaid, to chuſe new Regarders in their places, to make up the full number of xij. Regarders again, before that they can make their regard of the Foreſt. And in like manner it is, if the King by his Letters Patents do make one or more Regarders to fill up the number of twelve Regarders again, they cannot ex officio make the regard of the Foreſt without ſuch a writ, ut ſupra, directed to the Sheriff: for the Sheriff by the authority of that writ muſt ſwear the Regarders, as is aforeſaid: and they cannot by the Law make the regard of the Foreſt before that they be ſworn; for if they do, then their proceeding therein is void, quod nota.

Les Regarders ne poient faire lour regard del foreſt ſi non que ils ſoient Jure.

4. What

4. What a Foreſter is, how made, what his Oath, and what his Office, and of the Bedle of the Foreſt.

What a Foreſter is, he is taken for a Woodward, Co. 4. Inſt. 293.

A Foreſter is an Officer of the Foreſt of the King (or of another man) that is ſworn to preſerve the Vert and Veniſon of the ſame Foreſt, and to attend upon the wild beaſts within his Bailiwick, and to attach offenders there, either in vert or veniſon, and the ſame to preſent at the Courts of the ſame Foreſt, to the end that ſuch malefactors may thereby be puniſhed according to the quality and quantity of their offences and treſpaſſes.

How a Foreſter is made. Who is a foreſter of fee.

A Foreſter of the Kings Foreſt is made by the King himſelf, by his Letters Patents under the great Seal of England: and ſome ſuch Foreſters are Foreſters in fee, and have the ſame office to them and to their heirs, paying unto the King a certain fee-farm or rent for the ſame, as it doth appear by the Aſſiſes of Pickring and Lancaſter: and there are ſome other Foreſters of the King that have their office but for term of their life only: and again, there are ſome Foreſters of the King that have their office by Letters Patents from the King under the great Seal of England, but durante benè placito only. And in like manner it is of other Foreſters that are not Foreſters of the King. And thoſe that are ſervants to ſuch Foreſters to look to the Foreſt, and to attend the Deer for them, they are not properly called Foreſters, but walkers or underkeepers.

Walkers or Under-keepers.

Foreſters may not walk or make any attachments upon any perſon within the Foreſt, before they be ſworn (as they ought to be) Quia eſt contra Aſſiſam Foreſtæ, as appears by the Iters of Lancaſter, and by the Aſſiſes of King H. 2. called the Aſſiſes of Woodſtock, where the words are theſe, Nec aliquis aliquem attachiet, niſi ſit Foreſtarius

Itiner. Lancaſt. fol. 7. Aſſiſa foreſtæ de Woodſtock.

reſtarius curatus: and therefore, as alſo for the better execution of the other parts of his office he is to take the Oath here under-expreſſed: which alſo is to be given to every Walker and Under-keeper, and is as followeth,

You ſhall truly execute the office of a Foreſter, or Keeper of the Kings wild beaſts, in the walk called P. within this Foreſt of W. you ſhall be of good behaviour your ſelf towards his Majeſties wild beaſts, and the vert of the ſame Foreſt: you ſhall not conceal the offence of any other perſon, either in Vert or Veniſon, that ſhall be done within your charge; but as well the ſame offence, as alſo all attachments, you ſhall preſent at the next Court of Attachments, or Swanimote, which ſhall firſt happen to be holden for the ſame Foreſt: And you ſhall, to the uttermoſt of your power, maintain and keep the Aſſiſes of the Foreſt, and in all things the Kings right defend, concerning the ſame, ſo long as you ſhall be Keeper there, ſo help you God. *The Oath of a Foreſter, &c.*

Now it is to be ſeen what is the office of a Foreſter. And for that it is to be underſtood, that the whole office of a Foreſter of the Foreſt doth conſiſt in theſe four things, that is to ſay,

To { Preſerve. Watch. Attach. Preſent.

1. And as concerning the firſt point, which is, to preſerve: it is to be underſtood that a Foreſter, or Keeper of the Foreſt, muſt be a ſpecial preſervator of the Vert and Veniſon of the Foreſt, without the which it can be no Foreſt: and therefore ſuch an Officer muſt always have a vigilant eye to preſerve the Coverts of the Foreſt where the wild beaſts may have their ſecret abiding, and alſo *The Office of a Foreſter.*

alſo the wild beaſts which are beaſts of Venery. And ſuch an Officer may not kill or deſtroy any of thoſe beaſts of Venery of his own authority, without good warrant for the ſame: for if he do, the ſame is cauſe of forfeiture of his office. And alſo ſuch an Officer muſt be very careful to provide that the Deer may have food in the Winter: And for that cauſe the Law hath provided that the Foreſter may lawfully lop Trees in another mans land upon ſome ſpecial occaſions for ſuccour to the Deer in the Foreſt withall, as it hath been ſhewed before. Likewiſe every good Foreſter muſt be careful for the looking unto his deer in the fence moneth, which is the time of their fawning, for the preſervation of the young Fawns, for the increaſing of the game, according to the Aſſiſes of the Foreſt. And thus much concerning the firſt point of his office, which is to preſerve.

Aſſiſa de Pickr. fol. 19.

See before ca. 13. diviſ. 5.

2. The ſecond point of the Office of a Foreſter is, to watch, or to be careful in attending of the Vert and Veniſon of the Foreſt, to ſee that the ſame be not by any means deſtroyed: for as a Foreſter himſelf may not kill nor deſtroy any of the wild beaſts of the Foreſt without good warrant, nor yet cut down or deſtroy the Vert of the Foreſt: no more he muſt not ſuffer any other perſon to do any manner of treſpaſſe in the Foreſt to the hurt of the Vert or Veniſon of the ſame Foreſt: for it doth appear by the Laws of Canutus, Canon. 2. That Foreſters were appointed at the firſt, Ad ſuſcipiendum curam & onus tum Viridis tum Veneris.

See before ca. 18. diviſ. 9.

3. Now the third point of the Office of a Foreſter is, to attach offenders or treſpaſſers in the Foreſt: ſo that as a Foreſter by his Office is to be a preſervator of the Vert and Veniſon of the Foreſt; and therefore to watch and attend the ſame: he is likewiſe to attach or arreſt all ſuch offenders and treſpaſſers as he ſhall find offending

offending or treſpaſſing within the Foreſt, to the end that they may receive ſuch puniſhment for the ſame as the Laws of the Foreſt do in that behalf appoint.

4. Now the fourth point of the Office of a Foreſter is, to preſent; which is, that he that is a Foreſter muſt not conceal any manner of offence that ſhall be done within the Foreſt by any manner of perſon, either in Vert or Veniſon, but preſent the ſame: and alſo all manner of attachments that he hath made for any offence or treſpaſſe of the Foreſt, before the Verderers of the Foreſt, at the forty day Court, and at the Court of the Swanimote, according to the Aſſiſes and Laws of the Foreſt, to the end and purpoſe, that the Vert and Veniſon of the Foreſt may be the better preſerved and kept, by the due puniſhment of ſuch as ſhall be found to be any treſpaſſers or offenders in the ſame.

See before in the 18. and 19. Chapters of this Treatiſe, where you ſhall find much concerning the Office of Foreſters, Walkers, and other miniſters of the foreſt.

The Office of Foreſters having been thus in part laid down, it will not be unproper to add in this place ſomewhat touching their demeaning of themſelves in thoſe Offices towards the Kings liege people within the foreſt, in avoidance of Oppreſſion and Extortion by them: wherein alſo their Office is farther diſcovered.

And therefore the words of Charta de Foreſta, cap. 7. Nullus Foreſtarius vel Bedellus de cætero faciat Scotallas, vel colligat herbas, vel avenam, vel bladum aliquod, vel agnos, vel porcellos, nec aliquam Collectam faciat, niſi per viſum & ſacramentum duodecem regardatorum quando facient regardum. Tot Foreſtarii ponantur ad Foreſtas cuſtodiendum, quot ad illas cuſtodiendum rationabiliter viderint ſufficere. Charta de Foreſt. cap. 7.

It doth appear by the examination of this branch of the

the Statute, what great oppressions and extortions in times past were offered and done to the inhabitants and dwellers within forests, or near unto forests, and unto such as had any lands or woods within the forests by the Foresters and other Officers of the forest: and therefore this branch of this Statute was made as it were upon the general complaint of the whole communalty of this Realm, for a special provision and remedy for the avoiding of those mischiefs which the communalty were then oppressed withall: which mischiefs and oppressions do seem by this Statute to be twofold, that is, First the extortions of the Foresters and others of the forest: And secondly, the multitude of those Officers by whom they were so oppressed: and as the mischiefs at the time of the making of this Statute were twofold, so the provision and remedy of this Statute is twofold likewise: The first is a general prohibition for the avoiding of all manner of extortion by any Officer of the forest, beginning in these words, Nullus Forestarius vel bedellus de cætero faciat Scotallas, vel colligat herbas, vel avenam, vel bladum aliquod, vel agnos, vel porcellos, nec aliquam collectam faciat, nisi, &c. The second is a general prohibition made for the avoiding of all manner of surcharging of the forest with over many foresters and walkers, and other under-officers, to the end that there should be no more of those officers in the forest then might reasonably suffice for the keeping of the Kings wild beasts: and so by reason of the diminishing of those officers, their extortion might also the easilier be diminished.

Extortion by Officers of the Forest forbidden.

Oppression by surcharge of Officers prohibited.

And as concerning the first provision of the Statute, which is for the avoiding of extortion: it is to be understood, that there are seven things forbidden in this branch of the Statute, which are those things wherein the extortion of those officers in times past was most chiefly committed, which are as followeth, That

That is to say, that no Officer of the Forest shall by colour of his office only make any

1 Scot-ale.
Gathering of
2 Hey
3 Dates.
4 Other corn.
5 Lambs.
6 Pigs
7 Nor shall make any manner of gathering.

Now it is to be seen what thing Scottal or Scot-ale is. And for that it is to be understood, that a Scottal or Scot-ale is, where any officer of the Forest doth keep an Ale-house within the Forest where as he is an officer, and by colour of his office doth cause men to come to his house, and there to spend their money, for fear of having his displeasure: this is called a Scottal, and this is to be inquired of per duodecem juratores at the Swanimote, and also at the general Sessions of the Forest: and if such a Forester or Officer of the Forest be attainted of any such offence, then he is to be punished for the said offence, & also to be put from his said office. And the like Law is, where any Forester, or other Officer of the Forest, doth keep any game, or sell any Ale at a certain day, and by colour of his office doth cause the people to spend their money with him, this is also a Scot-ale.

A Scot-ale is a kind of extortion; and unlawful.

Colore officii, virtute officii.

But if a Forester, or other Officer of the Forest, be robbed, or have his house broken or burned by mischance, so that by those means he is undone, and he doth desire the people of the Forest, for his relief, to come and drink with him, and to give him their money for charities sake; this is no Scottal, nor yet any extortion: for a Scottal is extortion, because the same is taken Colore officii, and not virtute officii, But whatsoever is taken virtute officii, is not extortion: Note the difference.

And in like manner it is, if any Forester or other Officer of the Forest, by colour of his office do oppresse the people of the Forest that have any common of pasture within the same Forest, and do secretly compel them (in respect to have his favour) to give him Hay or Oates, or any other Corn, or Lambs, or Pigs, or do make any manner of collection for any money, or any other things: this is extortion, and is now prohibited by the Statute to be used any more hereafter; for the words are, de cætero, that is to say, from henceforth, that is, from the making of this Statute, such things shall not be used. And if any Officer of the Forest do use any such Scot-ale or gathering now at this day, the same is extortion by the Law, and the offender therein is to be punished for the same as an extortioner in this Case.

It appeareth by the words (de cætero) that before the making of this Statute, these extortions were used.

Then it followeth with a farther addition unto it, Nisi per visum & sacramentum duodecem regardatorum quando facient regardum: so that although the making of Scot-ales, and gathering of Hay or Oates, or any other Corn, or Lambs, or Pigs, or making of any manner of collection by any Forester or officer of the forest, is unlawful in some cases (as where any such thing is newly exacted upon the people of the Forest without any good title or right to the same:) yet in other some cases all those things that are here prohibited and forbidden by this Statute may be lawful; so that the same usage had its beginning by good and lawful title, which may be in three sorts, viz.

Scot-ale lawful in some cases.

1 By Tenure.
2 By Grant.
3 By Prescription.

1 The first is, by Tenure, as where a man doth hold certain land of the Kings within the forest, to pay unto

By Tenure.

to any officer of the Foreſt every year at his Scot-ale 12 d. or 5 s. or one Sheep or Lamb: this is not extortion, nor within the letter of the Statute; for this is not done Colore officii, that is by colour of his office only without any other right or title to the ſame, but this is a thing done virtute officii. And in like manner it is if a man do hold land of another man, paying for the ſame a certain rent, and alſo to pay yearly to a Foreſter or other officer of the Foreſt certain Oates or Corn, or ſuch like: this is not extortion nor within the letter of this Statute. So it is if a man do give land by his deed inrolled unto another in taile, to finde or to give unto the Foreſters of the Foreſt a certain collection every year: in this Caſe if the donee will not pay nor deliver the ſaid collection accordingly, the Foreſters or other Officers of the foreſt have not any remedy by the Law to compel the ſaid donee to pay the ſaid collection: but otherwiſe it is of the King himſelf, for he may by indictment in reſpect of his right of the foreſt have remedy: and in this caſe the donor himſelf may compel him by diſtreſs to pay the ſaid collection unto the ſaid Officers of the foreſt: and notwithſtanding that the donee do pay the ſame collection unto the donor, and not unto the ſaid officers of the foreſt according to the Tenure, yet that donee ſhall not be diſcharged by that payment, but that the donor may in this caſe diſtrain the donee a new for his ſerbice not done.

2 The ſecond is, by grant; as if any man dwelling within the foreſt will grant unto the King a certain collection or certain profit for his foreſter or other officer of the foreſt, to be received yearly by the ſaid officers: in this Caſe the ſaid foreſters or other officers of the foreſt may lawfully gather that collection or other profit, notwithſtanding the prohibition of the ſaid Statute. The ſame Law is, if a man do grant to ſuch

2 By grant.

an Officer of the Forest any such collection, profit or other thing, in Sustentationem officii, this is a good grant, and by this grant the said Officers of the Forest which have such a grant may lawfully take and gather such a collection, notwithstanding the prohibition by the letter of the Statute: and upon the first case the King may force him to come and to pay the said Foresters the said collection, or other profit, by an information for the King before the Justices of the Forest, by a Datum est curiæ intelligi, that the grantee will not pay such a collection according to his grant, may compel him to pay the same: and also in the said second case he shall be forced to perform his grant by an action of covenant.

3 By Prescription.

3 The third sort or manner of lawful gathering of such things is by prescription; and that is only where there hath been a Forest and Officers there, from time whereof the memory of man is not able to remember the contrary: for in that case to alledge that the Forest was made after the limitation of the writ of Right doth avoid the custome and prescription clean.

A Forester in fee may prescribe in him and his ancesters to have three half pence every day throughout the whole year, pro victu suo, and he may lawfully gather the same, notwithstanding the prohibition of the said Statute. And the like law is in all cases of prescription where the same prescription is lawfull. Hesket, f. 30. B.

So a Forester of fee may prescribe to have all the wind-fall-wood, or Mast-boys within the Forest, or throughout all his bailiwick, and in like manner all the brouse-wood that is felled for brouse in Winter for the Deer. Also a Forester may prescribe to have the umbles, and also one shoulder or both the shoulders of every Deer that is killed within his Bailiwick, and likewise the skin, and this is a good prescription in law.

So

So that, whereas the words of the Statute are, Nisi per visum & Sacramentum duodecem regardatorum: it is to be understood, that these words do permit and suffer some sort of Scot-ales, and collections made by the Foresters and other Officers of the Forest, to remain and continue still at this day: So that the same be such Scot-ales or collections as had a lawfull beginning at the first, as hath been shewed before, which of necessity must be in one of those three degrees aforesaid: and also that the foresaid Scot-ales or collections must be found and presented by the view of the Regarders upon their Oathes when they do make their regard of the Forest, that the said Scot-ales or other such like collections had a lawful beginning at the first, as by Tenure, by Grant, or by antient Prescription: so that thereby it may appear by their view and Oathes, that the said Scot-ales or collections which the Foresters and other Officers of the Forest do so use to make, is a thing that is lawfully done by right and good title to the same, and not wrongfully exacted upon the people by colour of their office only.

The letter is further, Tot Forestarii ponantur ad Forestas custodiendum, quot ad illas custodiendum rationabiliter viderint sufficere. Before the making of this Statute the Foresters and Keepers of the Forest, and others which had Bailiwicks of see within the Forest, would appoint and place many more Foresters and Walkers to keep the Forest then were needful: which multitude of such Officers did oppresse the people by sundry Extortions for their maintenance to keep them, because they had no wages or allowance of their Masters, but such things as they could get of the people by oppression and extortion by colour of their office: and therefore, now it is ordained by this Statute, for the aboiding of the same, that there shall not be any more Surchage of Officers.

Foresters or Walkers in any Forest than shall be thought meet and convenient by the discretion of the Regarders when they do make their regard of the Forest: and if the Regarders do find that there be more Foresters and Walkers than are needfull, and also more than hath been accustomed to be in antient time: Then upon their presentment of that matter, they shall be removed by the Justices of the Forest: and the offenders in this behalf shall be punished, as it doth appear by the Statute called, Ordinatio Forestæ, cap. 3. in these words: Et si superoneratio Forestariorum aut aliorum qui se gerant ut ministri Forestæ inveniatur, amoveantur hujusmodi superonerantes, & imprisonentur secundùm discretionem Justiciarii Forestæ vel ejus locum tenent', necnon & illi, per quos positi fuerant, ad voluntatem nostram similitèr puniantur; & ad quodlibet Swanimotum inquiratur de superoneratione Forestariorum & aliorum ministrorum Forestæ, & de eorum oppressionibus populo nostro, & fiant inde emendæ & punitiones, prout superius expressum. Hereby it appeareth that this manner of surcharging of the Forest is to be inquired of also in the Court of Swanimote: and then if any such be there found, the same is to be certified to the Justices of the Forest, and they are to remove such surchargers of the Forest. The punishment of such offenders is expressed by the words aforesaid.

Ordinatio Forestæ, made in An. 34 E. 1. cap. 3.

The punishment of surchargers of Forests with Officers.

And it doth appear by those words, Quoad illas custodiendum rationabilitèr viderint sufficere, that the number of the Foresters, and other Officers of the Forest aforesaid, are to be established by the discretion and Oath of the Regarders, as it doth appear by those words, Viderint sufficere, and that shall be according to the quantity of the ground of the Forest: for if the Foresters have divers Bailiwicks and Walkes, then there ought to be one Forester or more in every Walk-

or

or Bailiwick within the Foreſt to walk the ſame, as it is proved by the tenth Chapter de Capitulis attachiamentor', que boit, Quòd Foreſtarii manè ſurgant & in Ballivam eant & ibi morem faciant uſque ad horam nonam & tunc eant ad prandium: Et citò poſt prandium redeant in Ballivam ſuam, videlicet, in partes illas ubi non fuerant ante prandium, & ibi eant audientes & inſidiantes, ne quis in ea malum faciat, uſque ad veſperum: Et ſic faciat ſingulis diebus.

In capitulis attachiamentorum.

How and in what manner a Keeper or Foreſter ſhall walk.

And whereas the words of the Statute are, Nullus Foreſtarius, nec Bedellus: it is to be underſtood, that this word Bedellus, a Bedle, is an Officer or Servant of the Foreſt, that doth make all manner of garniſhments of the Courts of the Foreſt, and alſo all manner of Proclamations as well within the Courts of the Foreſt as without: and alſo to execute all the Proceſs of the Foreſt: he is like unto a Bailiff Errant of a Sheriff in his County. And here it is alſo to be noted, that although the letter of the Statute doth ſpeak but of a Foreſter & a Bedle, yet nevertheleſſe the ſame Statute doth extend to all other Officers in the Foreſt, as well as to the Foreſters and Bedles, for the Statute was made for the redreſſing of a general miſchief; and therefore the ſaid Statute ſhall not be ſaid to redreſſe it in part, but in all: like as the Statute that doth ſpeak but of the Warden of the Fleet only, and yet the ſame doth extend to all other Keepers of priſons as well as to the Warden of the Fleet, foraſmuch as the ſame Statute was made for the redreſſing of a general miſchief; and yet the letter thereof ſpeaketh but only of the Warden of the Fleet: and the like is of divers other Statutes.

Quid eſt Bedellus.

CHAP. XXII.

1. *When and how often the Court of Attachments shall be holden.*
2. *The duty of the Verderers at this Court, and of what matters the attachments there ought to be made.*
3. *The duty of Foresters, Keepers, Woodwards, and other ministers of the Forest, at this Court.*
4. *Of Presentments in the Court of Attachments.*
5. *How many kinds of Attachments of the Forest there be; and of Replevying of persons attached.*
6. *How men attached, that are baileable, shall be bailed, and by whom.*

1. When, and how often, the Court of Attachments shall be holden.

After that the Statute of Charta de foresta hath prohibited that the said Court of Swanimote shall not be kept any oftner than three times in the year, and hath set down the days when they shall be kept: It doth also there set down the time of the year when the Court of Attachments shall be kept, and the Officers that shalbe there, and what every Officer shall do there in the execution of his office; as it doth appear by the same Statute, the words being as followeth, Præterea, singulis quadraginta diebus per totum annum conveniant Forestarii, & Viridarii. It seemeth, that before the making of this grant of the liberties of the Forest, the Court of Swanimote, and also the said Court of attachments, then called the Woodmote Court, were holden very often, and yet not at any certain time neither, but at the will and pleasure of the chief Officers of the Forest, which was a great trouble

'Tis hereupon called the 40. day Court. Co. 4. Inst. 289. Charta de Foresta cap. 8.

trouble and vexation to the inhabitants in Forests; For the avoiding of which mischiefs, this branch of this Statute or grant was made: First, to set down how often in every year the Swanimote shalbe kept: Secondly, at what days and times in the year the same shalbe kept: And thirdly, that the Court of Attachments shall be kept every forty days throughout the whole year; and therefore is called the Forty day Court: And because that offences and trespasses in forests did daily increase and grow to be more and more: and for that the said Court of Swanimote is by this Statute restrained to be kept any oftner then thrice in the year: therefore this Statute hath specially provided that the Court of attachments shall be holden and kept every forty days throughout the whole year: and that is a very precise limited authority, appointed by this Charter for the keeping and holding of the same Court of Attachments: so that the same may not be kept or holden in any other manner then by this limited authority is appointed. And it is held for good law, at this day, that if the court of Attachments for the forests be holden or kept in any other order then every xl. days, that is to say, in longer or shorter time then every xl. days, that then the keeping of the same Court is void, and without authority so to do: for that the same is not kept according to the limited time appointed by this Statute.

And yet I do not think that all the procedings in the same Court so holden are therefore void in Law by that not holding of the Court according to the time appointed: for if such a Court of attachments be holden sooner than every xl. days, which is contrary to the limited time appointed by the Statute; and at that Court so holden, there be divers presentments and attachments presented against offenders in the Forest; and afterwards those presentments do proceed to the Swanimote,

and

and at the Swanimote Court the ſame treſpaſſer or offender doth there take exceptions to the ſame preſentment preſented againſt him, for that the ſame was preſented at a Court of attachments that was not holden as the ſame ought to be by the limited authority given by the ſaid Statute: yet that Exception ſhall not avoid the ſame attachment or preſentment, foraſmuch as the Court of attachments did not proceed in the ſame Judicially, but only to receive the ſame preſentment or attachment, to Enroll the ſame in their Roll, and to deliver it to the next Court of Swanimote: and ſuch a receiving of a preſentment or attachment at ſuch a Court ſo holden, cannot by any reaſon make the ſame void, foraſmuch as the ſame preſentment or attachment had been ſtill good in Law if the ſame had not at all been preſented until the next Court of Swanimote, and then preſented there, and not before.

But if a Court of attachments be holden contrary to this Statute, and a foreſter having attached an offender in the Foreſt, to appear at ſuch a Court of attachment before the Verderers, by an Or, or a Horſe, and the man ſo attached doth not there appear at that Court, wherefore the ſame court of attachments doth give judgment that his beaſt is forfeited by his default, in not appearing, and that the ſame beaſt ſhall be ſold, and the price thereof to be levied to the uſe of the King; This proceeding now in this caſe is void in Law; for in this caſe the ſaid Court of attachments doth proceed herein Judicially; but it is otherwiſe in the Caſe before: Note the difference.

Vide Maſter *Hesket* in his reading of the Foreſt, fo. 13.

And yet for all this it is to be noted, that ſometimes this Court of attachments may be kept a day or two more then forty dayes after the Court of attachments that was kept laſt before it, and yet the ſame Court is not kept any otherwiſe then according to the meaning

of

of the same Statute: but that is but in certain cases of necessity, which cannot otherwise be aboided: as if the just fortieth day next ensuing the former Court day do fall to be upon a Sunday, or upon Christmas day, then the same Court day that so doth fall upon a Sunday or upon a Christmas day, may be deferred a day longer; but that is because of the necessity that cannot be aboided in that case; for it is to be thought, that it was not the meaning of this Charter of the Forest, at the first, that this Court of attachments should be kept upon any such day (as Sunday or Christmas day) which are prohibited for the service of God only; for such days are not accounted any days in Law to hold any Courts in.

2. The duty of the Verderers at this Court, and of what matters the Attachments there ought to be made.

The words of the same Statute are further, Ad videndum attachiamenta de Foresta tam de viridi quam de venatione: In which words there are two principal things to be noted; that is to say, the first is the office and duty of the Verderers, and what they ought to do at this Court of Attachments: which is, ad videndum Attachiamenta de Foresta, that is to say, to see the attachments of the Forest, so that the office of the Verderers at this Court of attachments is here, as it were, even pointed out with the finger what they are there to do, which is, to sit there to see the Attachments of the Forest, and to receive the same Attachments of the Foresters and Woodwards that do present them there, and then to enter those attachments in the Rolls of the Verderers. And it seemeth that because this Court is most chiefly a Court for the Foresters, to bring in their attachments of the forest, and for the Verderers to receive

Why this Court is called the Court of Attachments.

receive the same attachments, therefore the same Court is called the Court of Attachments receiving its name of the effect of the thing about which it is busied, which is (as is said before) ad videndum attachiamenta, to see the Attachments of the Forest. Then the second thing that is here in these words aforesaid to be noted is, of what matters they are to see Attachments, and to receive attachments; which lest that haply they should herein exceed their authority, the said Statute doth plainly set down of what matters those attachments ought to be which they shall so see and receive at the said Court of Attachments, in the words aforesaid, viz. de viridi & venatione, which is, of Vert and of Venison; So that all Attachments that this Court hath here by this Statute any authority to deal withal, the same must concern the hurt or injury that is done, or that is to be done, to the Vert or Venison of the Forest, or else this Court is not to meddle with the same; for their authority is but tam de viridi quam venatione: So that you may see by this Statute, that every forty days throughout the whole year it is appointed that the Foresters and Verderers shall assemble themselves together, to see the attachments of the Forest, as well of Vert as of Venison: At this Court the Foresters bring in the Attachments de viridi & venatione, and the presentment thereof, and the Verderers do receive the same and inroll them; but this Court can only inquire and not convict: But it is to be observed, that no man ought to be attached by his body for Vert or Venison, unless he be taken with the manner within the Forest, otherwise the Attachment must be by his goods. Co. 4. Inst. 289.

Of what things the Court of Attachments hath authority to deal.

3. The

3. The duty of Foreſters, Keepers, Woodwards, and other Miniſters of the Foreſt, at this Court.

NOw the words of the Statute, there are farther as followeth; per preſentationem ipſorum Foreſtariorum, & coram ipſis attachiatis: In theſe words here is ſet down the office of the ſoreſters or keepers, and wherefore they ought to come to this Court of attachments, which is, to preſent offenders and offences or treſpaſſes there, and to bring in the attachments there that they have made of offenders which they have attached for doing of ſuch treſpaſſes in the forest: for it appeareth by this Statute, that the office of Verderers is to view the attachments there, and to receive them per præſentationem ipſorum foreſtariorum: And the office of the forresters, or keepers, at this Court is to preſent the attachments of the forest before the verderers; ſo that the difference between the office of a verderer, and the office of a forester, at this Court of attachments, is this, that a verderers office is, ad videndū attachiamenta de foreſta; and a forresters office is, ad præſentand' attachiamenta de foreſta: and theſe words, & coram ipſis attachiatis, muſt be underſtood in this manner, as if the words had been, Et coram ipſis viridariis attachiatis præſentatis, that is to ſay, preſented before the verderers as things attached, or perſons that are attached for ſome treſpaſſes done in the forest in Vert or Veniſon.

This Court of Attachments doth differ from all other Courts, in that the ſame is kept every forty days throughout the whole year, by the Verderers, &c. And therefore this court is called of ſome men the verderers court, becauſe that the verderers do keep the ſame court: And yet at this Court of attachments all the forresters of the forest ought to appear there alſo by this Charter: The Court of Verderers.

M. Hesket, f. 44. ter: And as Master Hesket affirmeth in his learned reading of the Laws of the Forest, fo. 44. all other Officers and Ministers of the Forest ought to appear at this Court of Attachments, although that the letter of this Statute doth not specifie so much by special words; for the Statute doth speak but of Foresters, and not of any other Officers. At this Court every Forester must by his oath present all offenders in Vert and Venison within their several walks and charge; and also all attachments that they have made: Woodwards must likewise present at this Court all offences done within their charge; but they cannot make any attachment, nor attach any offender within their charge; for the words of Assisa & Consuetudines Forestæ, articulo 12. are these; Si Woodwardus viderit malefact' in custodia sua, vel bestiam mortuam, debet monstrare capitali Forestario, vel Viridario: So that you may perceive by this Statute, that a Woodward may monstrare, but not attachiare, that is to say, he may present offenders, but not attach offenders.

Foresters.

Woodwards.

Consuetudines Forestæ, art. 12.

4 Of presentments in the Court of Attachments.

The usual form of a presentment in the fourty-day Court, or Court of Attachment, according to the course of Law, is in this manner, viz. Ad istam Curiam Attachiamenti Dominæ Reginæ Forestæ suæ de Waltham in Comitatu Essex tent. apud Chigwell in eodem Comitat. nono die Julii, Anno Regni Dom'næ nostræ Eliz. Dei Gratiâ, Angliæ, Franciæ, & Hiberniæ Reg. Fideī defensoris, &c. vicesimo primo.

The title of the Court of Attachments.

Johan. Mathewes Forestar. jurat. de Warda de Woodford infra Forestam istam præsentat, quòd Johan. West Chinkford in Com. Essex Yeoman, nono die Julii, anno Regni Dominæ nostræ Eliz. Dei Gratiâ Angliæ, Franciæ,

The form of a Presentment.

&

& Hiberniæ, Reg. Fidei defenſoris, &c. viceſimo primo; intravit Foreſt. iſtam cum arcubus & ſagit. & ibid. in quodam loco vocat. Woodſord Head infra Foreſtam prad. verſavit unam damam ad mort. & carnes cepit, & fecit inde voluntat. ſuam. And it is to be noted, that every preſentment that ſhall be made againſt any ſuch offender, for any offence done in the Foreſt, in Vert or Veniſon, muſt be certain concerning the ſame offence, and that in theſe five things hereafter following.

First, the ſame muſt be certain concerning the perſon of the offender, as to ſhew the name and ſirname of the offender, and the place where he doth dwell. 1. The perſon.

The ſecond is, that the ſame muſt be certain concerning the place where the offence was done, as to ſhew in the preſentment that the offence was done in ſuch a place, which is within the Foreſt; ſo that thereby it may appear whether the ſame offence were done within the Foreſt or not; for thereby it may be diſcerned whether the ſame be any offence or no offence. 2. The place.

Thirdly, the ſame preſentment muſt be certain concerning the thing it ſelf in which the offence was committed or done, as to ſay, that the offender killed a Buck or a Doe, or as the ſame in truth was. 3. The thing.

Fourthly, the ſame muſt be certain concerning the inſtruments with the which the offence was done; and that ought to be ſhewed certainly; for the inſtruments with the which the offence was done are forfeited to the King: as if an offender do enter into the Foreſt with a Croſs-bow, or a Long-bow, and there do kill a Deer, the Croſs-bow is forfeited to the King, and ſo is the Long-bow likewiſe. 4. The inſtruments.

The fifth is, that the ſame preſentment muſt be certain concerning the manner of doing of the ſame offence; for the manner and form of the doing of the ſame offence may make the puniſhment thereof greater or leſſer. 5. The manner of the act.

Voluntary offence: Negligent offence.

lesser, as the case doth require; it may make the same offence to be a voluntary offence in the offender, or a negligent offence in the offender; as if a man riding thorow the Forest, having a Grey-hound fast in a slip by his side, and the Greyhound passing thus thorow the Forest doth espy the Deer, and with the force and strength of the Greyhound he doth slip the Collar, and so against the will of the owner the same Greyhound doth kill a wild beast of the Forest, this is but a negligent offence in the owner of the Greyhound; in which case the manner of the same offence must be certainly shewed.

§ How many kinds of attachments of the Forest there be; and of replevying of persons attached.

AS concerning attachments of the Forest, it is to be noted, that there be three manner of Attachments of the Forest; that is to say,

To attach { 1 By goods and chattels. 2 By body, pledges, and mainprise. 3 By the body only, without pledges or mainprise.

The first manner of attachment.

The first manner of Attachment is, to attach a man by his goods and chattels; and that is to attach a man in the same manner as the Sheriff doth make an Attachment at the Common Law by the goods of any person in an Action of Debt or Trespass in the County Court, to cause the party attached to appear there, and to answer the said Action: Even so it is if any offendor within the Forest have committed any offence in any manner of nether Vert, and afterwards the Forester hath knowledge thereof, then the Forester may attach

Offence in nether Vert.

attach his Cow, or his horse, or any other beast or goods that he hath within the Forest, and then after such Attachment made, to declare unto the owner of the same goods or chattels the cause why he is so attached, and to will him to appear at the next Court of Attachments, and to find pledges there to answer the same offence; and then such a Forester in the mean time to keep such goods or chattels so attached in his own custody, until the Court of Attachments to be holden for the same Forest; and then the same Forester, at the said next Court to bring in the same attachment before the Verderers, and there to present as well the offence for the which he was so attached, as also the attachment it self, to the end that the Verderers may view the same; and then if the same offender do not make his appearance at the said next Court, according as he was attached to be, to answer his said offence, but there doth make default, then by his default for not appearing, his goods that were so attached are forfeited to the Kings Majesty, and then by the order of the same Court the same attachment shall be sold, and the value thereof shall be answered to the King; and the same offender shall be attached again by other goods, and the like shall be still done against him, until such an offender do appear at the said Court of Attachments, and there do put in sureties or pledges to answer the offence aforesaid at the nert Justice seat of the Forest. But if such an offender do appear at the said Court of Attachments, and do there find pledges to answer the offence aforesaid, at the next Justice seat of the Forest, then he is to have the goods that were attached delivered unto him again: But it seemeth by the ancient Presidents of Forest Laws, that in every presentment of offences done in the Forest in Vert, that is presented before the Verderers, the value of the Vert must be set down in the same presentment and delivered

Goods attached forfeited for not appearing.

In a presentment of Vert the value of the Vert must be set down.

to the Verderers upon the oath of the Forester; and if by the presentment of the forester, upon his oath, it doth appear that the value of the same Vert is under the sum of 4 d. so that the same offence doth seem to be so small an offence that it is not worthy to be heard before the Lord Justice in Eyre of the Forest, then the Verderers may determine the same offence before them in the said Court of Attachments, and assess the fine, and also cause the same to be levied to the use of the Kings Majesty, and all this to be entred in their Roll accordingly.

And the like manner of Attachments by goods and chattels may be made and used for all manner of small offences in the Forest, and for any manner of trespass in Vert or Venison, where the offender is not taken with the manner doing of the same trespass (taking only in certain cases which shall be shewed hereafter;) for that by that means the Forester may compel the offender in the end to come before the Verderers to appear at the said Court of Attachments and there to find sureties or pledges to answer the same trespass or offence (according to the Law in that behalf) at the next Justice seat of the Forest, before the Lord Justice in Eyre of the Forest. And thus much concerning the first Attachment by goods and chattels.

The second manner of Attachment.

The second manner of Attachment is, to attach a man by his body, by pledges, and by mainprise; and this manner of attachment may be made and used in every case where the Forester doth find any offender in the forest trespassing in Vert, and doth take him with the manner doing of the same (so that the same be not in the Kings demesne woods, making of assarts or purprestures there:) then the Forester may attach him by his body, and then cause him to finde two pledges to answer the same offence at the next court of attachments; and then upon his appearance at the said next Court of Attachments

Vid. 1.E.3.c.8. 7.R.2.c.4.

ments there to be mainpzised until the coming of the Lozd Justice in Eyze of the fozest. And this manner of attachment is warranted by Consuetudines & Assisa foreſtæ, articulo, 1. in these wozds, Si quis forestarius invenerit aliquem attachiabilem pro viridi in foresta nostra, primò debet ipsum attachiare per duos plegios, &c. And if the same offender be taken with the manner offending in the fozest the second time, then the fozester shall attach him by the body, and cause him to find four pledges to appear at the next Court of Attachments, and then there to be mainpzised until the general Sessions of the Lozd Justice in Eyze of the fozest, to answer the said offence: Foz in the said Statute of Assisa & Consuetudines foreſtæ, the wozds are these, Si idem inveniatur alias, debet ipsum attachiare per quatuor Plegios: And if afterwozds the same offender be found offending again in the fozest the third time, then the fozester shall attach him by the body, and cause him to be bzought befoze the berderers, and there to be mainpzised by eight Pledges, accozding to the same Statute of Assisa & Consuetudines foreſtæ, articulo 1.

Consuetudines & assisa foreſtæ artic. 1.

And it is to be noted, that in all cases where the offender is to be attached by the body and pledges, there of necessity the offender must be taken with the manner: foz otherwise, the fozester, noz any other officer in the foreſt may not attach any such offender by the body and pledges, (except he do take the same offender with the manner;) Foz this Statute of Assisa & Consuetudines foreſtæ, afozesaid, was made in Ann. 6. E. 1. And now long since the making of that estatute of An. 6. E. 1. this Law and statute is altered in some part, by a statute that was made in An. 1. E. 3. cap. 8. Foz the same statute of Anno 1. E. 3. cap. 8. doth directly set down there the very manner and fozm how every offender in the fozest, either in Wert oz Venison, shall be indicted foz the same offence,

Assisa & Consuetudines articulo 1.

The party ought to be taken with the manner.

Assisa & Consuetudines foreſtæ, altered by the stat. of 1. E. 3. cap. 8.

1. E. 3. cap. 8.

and also before whom the same shall be done: and there addeth to the same statute further, that if any man be indicted for any offence done in the forest, either in vert or venison, in any other manner than in the same order and manner that the same statute there doth set down and declare; that then the same indictment and proceeding shall be void and of none effect: And it is by the same statute likewise enacted also, that from thenceforth no man shall be taken nor imprisoned for vert or venison, unless he be taken with the manner, or else indicted after the form before specified in the same Statute; so that now by this Statute of 1. Edward 3. cap. 8. and also by the Statute of 7. Richard 2. capit. 4. If the Forester or other Minister of the forest, do not find the offender doing of the trespass, or take such an offender in the Forest with the manner, then the same Forester or other minister of the Forest is forbidden by these two latter Statutes to take the body of any offender, or to imprison him, to find sureties; in this case, because the same person was not taken with the manner: But yet, if any person have done an offence in the forest, and the same offence is not presently known, so that the offender is not taken with the manner doing of the same offence, and therefore by the Law the forester cannot attach his body for the same: yet in that case the forester may now attach him by his goods, as is aforesaid, and so cause him to find pledges to answer the said offence, or else to forfeit his goods or chattels that shall be attached for the same, from time to time, until he doth appear and find pledges, as is aforesaid: but surely no offender in the forest, either in vert or venison, may be attached by his body, or imprisoned for vert or venison, unless he be taken with the manner, or else indicted in the form before specified in the said stat. for these two latter stat. were made directly in the negative of the Law that

1. E. 3. cap. 8. & 7. R. 2. cap. 4. no man shall be taken nor imprisoned for Vert nor venison, unless he be taken with the manner.

was

was before: and so the said law or stat. of Assisa & Consuetudines forestæ, made in an. 6. E. 1. is altered in this point, that is to say, that in all cases where the forester is to attach an offender by the body, there the same must be understood, that such an offender must then be taken with the manner, or else he may not be attached by the body, nor yet imprisoned to find sureties or pledges, causâ quâ supra.

Note this statute wel, for the words are these: No man shalbe taken, nor imprisoned for bert or benison, &c. and by this word taken, is to be understood, that he shall not be arrested by his body for bert nor benison, unless he be taken with the manner. But now how this word (with the manner) shall be understood, I leave you to the sence and construction of the statute it self: And see the statute here before, and the notes in the margent, concerning the same: And thus much concerning the second manner of Attachment, that is to be made by the body, by pledges, and by mainprise.

The third manner of Attachment for offences of the forest, is to attach an offender by the body only, without any pledges or mainprise; and this manner of attachment is warranted by the Statute of Assisa & Consuetudines Forestæ; and afterwards the same manner of attachment is in some part confirmed and allowed of by the foresaid statute of Anno 1. E. 3. cap. 8. The third manner of Attachment.

And this manner of attachment by the assises of the forest, called Assisa & Consuetudines forestæ, made in An. 6. E. 1. and by the statute of 1. E. 3. cap. 8. which you may see here before amongst the statutes, is there expressed and declared to be for offenders in the forest, that are in six degrees, as it shall plainly appear.

The first degree of those offenders in the forest that are to be attached by the body only, without any sureties or mainprise, is specified and declared in Assisa & 1. Degree. Assisa Forestæ, Artic. 1.

Consuetudines Foreſtæ, Art. 1. in theſe words: Poſtea, poſt tertiũ Attachiamentũ corpus debet Attachiari & retineri, ut memoria habeat' quid ſit virid': ſo that if an offender hath been taken with the manner offending in bert in the foreſt, and hath bin delibered by two pledges for that offence: and likewiſe for the ſecond time offending, by four pledges: and afterwards for offending again, the third time, hath been delibered by eight pledges, according to the ſaid article; then if he be taken with the manner doing of a treſpaſs in the foreſt in bert the fourth time, his body ſhall be detained in priſon accoꝛding to the ſaid aſſiſes of the foreſt, ſcil. Poſtea, poſt tertiũ Attachiament' corpus debet attachiari & retineri, &c. And then he that is ſo attached by the body, and impriſoned, he ſhall not be delibered out of priſon, or be bailed, without the Kings eſpecial warrant for that purpoſe, or that he be bailed or delibered out of priſon by the Lord chief Juſtice in Eire of the foreſt, or by the chief Warden of the Foreſt; for otherwiſe no officer of the foreſt may deliber him out, or to mainpriſe.

Vert.

Who may bail an offender imprisoned in this case.

2. Degree aſſiſa Foreſtæ, Art. 4.

The ſecond degree of ſuch offenders as are to be attached by the body only, is ſpecified in the ſaid aſſiſes and cuſtomes of the foreſt, Art. 4. in theſe words: Si quis inventus fuerit in dominico dom. Regis aſſartando vel purpreſturam faciendo, corpus debet protinus retineri; ſo that if any man be found or taken with the manner, making of purpreſture in the demeſne woods of the King, his body ſhalbe forthwith taken; and after that he is ſo attached by the body, he ſhall be detained in priſon for the ſame offence; and then he ſhall not be delibered out of priſon, or bailed, without the Kings eſpecial warrant, or by the Lord chief Juſtice in Eyre of the foreſt, or by the chief warden of the foreſt; for in this caſe no other perſon can deliber him by bail or otherwiſe.

Who may bail an offender in this caſe.

3. Degree.

The third degree of ſuch offenders is alſo declared in the

the said assises of the forest, in the fourth Article, in these words: Si autem extra dominicum infra rewardum, debet poni per sex plegios; & si aliàs inveniatur, debet duplicare ejus plegios; si tertiò, corpus debet retineri: so that if a man be found in the Forest, assarting or making of purpresture out of the Kings demesne woods; Vert. For the first offence he is to be delibered by six pledges: And if he be found offending so again the second time, then he shall double his pledges: But if he be found so offending again the third time, then he shall be attached by his body, and shall be detained in prison, and shall not be delibered or bailed out of prison, but as is before-said, and not otherwise. Who shall bail an offender in this case.

The fourth degree of offenders in the forest, in this case, is expressed and declared in Assisa & Consuetudines Forestæ, Articulo 1. in these words: Si quis attachiabilis fuerit contra vadios & plegios, debet distringi per catalla sua infia metas Forestæ inventa, si autem defecerint, corpus ejus detineatur quousque fecerit quod debuerit: In this case, if any person that hath been an offender in the forest in Wert, and being therefore bound to the good behabiour of the forest, and afterwards the said offender committing the like offence in the forest again, and being taken with the manner, and having no cattel in the forest that he may be attached by for the same offence, then his body is to be attached, and to be detained in prison until that he have done that which by the law he ought to do: And such an offender is called contra vad. & plegios, because he doth now offend contrary to his pledges and sureties; and such an offender shal not be delibered out of prison by means or by any other person, then is aforesaid. 4. Degree. Assise Forestæ, Art. 5. Vert. Who may bail an offender in this case.

The fift degree of offenders in this case, is for benison, which is declared in Assisa & Consuetudines Forestæ, Articulo 10. in these words: Si quis ceperit feram sine Warranto in Foresta, corpus suum arestetur, ubicunque 5. Degree. Assisa Forestæ, Art. 10. & 11.

Veniſon.

inveniatur infra metas Foreſtæ,& quãdo captus fuerit,non deliberetur ſine ſpeciali præcepto domini Regis, vel capitalis Juſticiarii Foreſtarum ſuarum: And again, in the ſame Aſſiſes in the 11. Article in theſe wozds = Si quis viderit aliquos malefactores infra metas Foreſtæ aliquam feram capere vel aſportare, debet illos capere ſecundùm poſſe ſuum, & ſi non poſſit, debet levare huteſium & Crie, &c, In which caſes, if any offender be taken with the manner killing of a Deer in the Fozeſt, oz carrying of the ſame away,without a good warrant ſo to do, then ſuch an offender in this caſe is to be attached by his body, and to be impziſoned, and there to be detained until ſuch time as he be delibered out of pziſon by the Kings eſpecial commandment, oz the commandment of the Lozd chief Juſtice in Eyze of the fozeſt, oz by the chief warden of the fozeſt: foz no other perſon may deliber him oz let him to mainpziſe.

Note, the word is, *Fera*, a wild beaſt.

Who may bail an offender in this caſe.

6. Degree. Anno 1.E.3. cap. 8.

The firſt degree of ſuch offenders in the fozeſt as are to be attached by the body only,without pledges oz mainpziſe, is ſet down and declared in the Statute of Anno 1.E.3.ca.8. and this is either in bert oz beniſon,in theſe wozds;It is agreed and ozdained,that from henceforth no man ſhall be taken noz impziſoned foz bert noz beniſon, unleſs he be taken with the manner, oz elſe indicted after the fozm ſpecified and declared in the ſame Statute: foz that it doth appear plainly by the very wozds of the ſame Statute,that if an offender in the fozeſt,either in bert oz beniſon, be indicted after the ſame fozm and manner mentioned and declared in the ſaid ſtatute, and befoze ſuch officers as is there appointed, that then if ſuch an offender be attached by the fozeſter, oz by the Sheriff (by his body, as he by the Law ought to be) having a warrant foz that purpoſe from the Lozd chief Juſtice in Eyze of the fozeſt to attach ſuch an offender, oz from the chief Warden of the fozeſt, oz his Lieutenant;

Vert & veniſon, Vide the Statute, Anno 1. E.3.cap.8.

nant; then his body is to be retained ſtill in priſon: and then he ſhall not be mainpriſed, nor let to bail by any perſon, unleſs it be by the ſpecial commandment of the King, or by the Lord chief Juſtice in Eyre of the foreſt, or by the chief Warden of the foreſt. And in the very like manner it is, where an offender in the foreſt is outlawed for the ſame offence, and his body is attached by the Sheriff, by Capias Utlagatum.

Who may bail an offender in this caſe.

And thus you ſee that there be ſix degrees of offenders that are to be attached by the body only, without pledges or mainprize. And note this, for a ſpecial learning, that in every caſe where the offender is to be attached by the body only, without pledges or mainprize, as in the foreſaid ſix degrees, there ſuch an offender is not to be bailed by the Verderers, nor by the Foreſters, nor by any other miniſter or officer of the foreſt, unleſs the ſame be by the Kings ſpecial commandment, or by the Lord Chief Juſtice in Eire of the Foreſt, or by the Chief Warden of the Foreſt: See the words of the ſaid ſtat. and note them well; for they are as followeth: viz. No man ſhall be taken nor impriſoned for bert nor beniſon, unleſs he be taken with the manner, or elſe indicted after the form before ſpecified: and then the chief Warden of the foreſt ſhall let him to mainprize till the Eire of the foreſt, without any thing taking for his deliverance: and if the chief Warden will not ſo do, he ſhall have a Writ out of the Chancery, which hath been in old time ordained for ſuch perſons indicted, to be at mainprize till the Eire: and if ſuch a chief warden after ꝑ he hath received the writ, do not incontinently deliver ſuch perſons indicted to mainprize, without taking any thing, then the pl. ſhall have a writ out of ꝑ Chancery to the ſheriff to attach the ſaid warden to be before ꝑ King at a certain day, to anſwer wherefore he hath not replevied him ꝑ is ſo taken; & the ſheriff, the verderers being called

Where the offender is to be attached by the body only without pledges or Mainprize: there the Verderers nor Foreſters may not bail the offender. 1 E. 3. cap. 8.

called to him, shall deliver him that is so taken, by good mainprise in the presence of the Verderors, and shall deliver the names of the mainpernors to the same Verderers to answer in the Eyre of the Justices. And if the chief Warden be thereof attainted, the plaintiff shall recover his treble damages, and the said Warden be committed to prison, and ransomed at the Kings will. And from henceforth it shall be written to them, as to the chief Wardens of the Forest, because they may not be Justices, nor have any record. But here in this case of the Statute, the Sheriff doth let him to mainprise by the Kings commandment, that is to say, by the Kings writ, for otherwise the Sheriff might not so do: and the Verderers in this case are but assistants to the Sheriff, for they do not joyn in authority with the Sheriff, in letting of him to mainprise, for they have no such commission nor authority, for the writ is directed to the Sheriff only, and not to the Sheriff and Verderers; but it is contained in the same writ, that the Sheriff shall let him to mainprise in presentia viridariorum, because that the Verderers being Judges of Record, the names of the mainpernors be delivered unto them. And thus much concerning attachments, and the replevin of persons that are attached.

6. How men that are bailable shall be bailed, and by whom.

NOw it is to be seen, how the said bond by pledges shall be taken, and by whom. And therefore, first of all it is to be noted, that in all cases where any offender is to be attached by his goods and chattels, which is the first manner of attachments, or else to be attached by his body by pledges and mainprise, which is the second manner of attachment: the meetest Officers to take

take bond of ſuch offenders in the caſes aforeſaid, in the which they are by the Law to be bailed, are the Verderers, and that for two cauſes: The firſt is, that foraſmuch as the ſaid Verderers are Judges of Record, and have the keeping of the Rolls for matters of the Foreſt until the coming of the Lord Juſtice in Eyre of the Foreſt: therefore if the Foreſters do take any offender with the manner offending in Vert in the Foreſt, they are to attach him by the body, and to bring him before the Verderers: and then they may take a Recogniſance of the offender and his pledges to anſwer the ſame offence in the Eyre of the Juſtice of the Foreſt, becauſe they are Judges of Record; and therefore they may take a Recogniſance in this caſe, and ſo may not the Foreſters do, for they are no Judges of Record, but accuſers of offenders, and Preſenters of offences done by others in the Foreſt, before the ſaid Verderers. The ſecond cauſe is, for that the ſaid Verderers are men that of neceſſity muſt be learned and well practiſed in the knowledge of the Laws of the Foreſt; and ſuch offenders muſt be bailed and mainprized according to the quality and degree of their offence, in ſome caſes by two pledges, and in other ſome caſes by four, ſix, or eight pledges; and in ſome other caſes, the offender is not to be bailed at all by the ſaid Verderers or Foreſters, as it hath been already ſhewed before, nor yet by any other perſon, but only by the Lord chief Juſtice in Eyre of the Foreſt, or by the chief Warden of the Foreſt: and then if the Foreſters, or other Officers of the Foreſt that are ignorant of the Laws of the Foreſt, ſhould take upon them to bail ſuch offenders, no doubt but great inconveniences would enſue thereby, as well unto the King, as alſo to the offenders themſelves: and therefore ſuch offenders are moſt meeteſt to be bailed by the foreſaid Verderers, to the end that the ſaid Verderers may bail them according

The Verderers fitteſt men to let bail.

Recogniſance.

Steward.

ding to the very Laws of the Forest. And for that cause the Law hath provided and appointed a Steward that must be learned in those laws, to joyn with them and to direct them in their proceeding, according to the same Law. And when such offenders are bailed before the said Verderers, then the same Verderers are to keep the same Recognisance for the Kings use, until the coming of the Lord Justice in Eyre of the Forest, and also to cause the Forester to present the same offence in the same nature as it was done; and then such presentments to be entred in the rolls of the Verderers accordingly: whereas, if the Foresters, when they have arrested such an offender might bail such offenders themselves at their own will and pleasures, without the Verderers, there might be great partiality used therein, and many grievous trespasses concealed from the King, and never any presentment made thereof before the Verderers at the Court of Attachments, or at the Swanimote Court. And also the Verderers may take an obligation of the offender and pledges with him, as the Law doth appoint in tha case: which obligation being made unto the Kings Majesties use, shall be as forcible in Law, by reason of the Statute of Anno 33. H.8.cap.39. as any Recognisance knowledged according to the Statute of the Staple.

Obligations taken to the Kings use shall be of the same nature as a Statute or Recognisance.

CHAP.

CHAP. XXIII.

1. *Of the Court of Swanimote, and why ſo called.*
2. *That the Verderers are Judges of this Court; not the chief Warden of the Foreſt, nor his Lieutenant.*
3. *How often in one year the Swanimote ſhall be holden: and what Officers, Freeholders, and others, owe their attendance there.*
4. *That upon default of appearance, the defaulters may be compelled to appear by Diſtreſs: and how thoſe Diſtreſſes ought to be taken.*
5. *About what matters the juriſdiction of the Swanimote is exerciſed.*
6. *Of Indictments or Preſentments in the Swanimote Court: and what Indictments or Preſentments of the Foreſt are traverſable, and what not: and of Outlawry.*
7. *The Charge given in the Swanimote.*

1. Of the Court of Swanimote, and why ſo called.

WHatſoever is eſtabliſhed by man, it is of no continuance, unleſſe the ſame be put in ure with daily ſupply: whatſoever is ordained by wiſe men for a Law, the ſame by order is to be put in due execution: I mean this as touching the Laws of the Foreſt: for as our fore-fathers made Laws, ſo they did ordain a Court commonly called a Swanimote, intending thereby to puniſh ſuch as committed any offence againſt the Foreſt Laws, ſo that thereby the Law which was made might have continuance.

And it is to be underſtood, that a Swanimote is properly

What the word Swanimote doth signifie.

perly a Court of Freeholders within the Forest, for this word More in Norman speech, is called properly a Court, as Hallmote are the Courts Baron: Folkemote are the Courts holden in London, wherein all the folk and people of the City did complain upon the Maior and the Aldermen, for mis-government within the City: and Portmote is ever in a Haven Town, for it is the Court of the Port or Haven: and this word Swaine, in the Saxons speech, is a Bookeland man, which at this day is taken for a Charterer or a freeholder: and so the Swanimote, is in English, a Court within the Forest, whereunto all the freeholders do owe suit and service, and therefore called a Swanimote.

Swein, id est, Saxonice, Minister, & mote or gemote, i. e. Cure, viz. Cura Ministrorum foreſtæ, so called because it is but a preparative to the Justice-seat, Co. 4. Inst. 289. A Court of Freeholders.

A Subject may have a Swanimote Court, per Coke, Bulstr. 2. part 295.

2. That the Verderers are Judges of this Court; not the chief Warden of the Forest, nor his Lieutenant.

Judges of this Court. Co. 4 Inst. 289.

THe chief Judges in this Court are the Verderers; and the pleas that are in this Court are called placita Foreſtæ, the pleas of the Forest. Also the chief Warden of the Forest doth sometime use to sit at this Court, or his Lieutenant, as it doth appear by Master Hesket, in his learned Reading upon the Statute of Charta de Foresta: and yet it should seem, that the chief Warden of the Forest is no judicial Officer appointed to sit there; for if he were, he could not appoint his deputy to sit there for him: for a judicial place cannot be executed by a deputy, as it doth appear by divers presidents and cases at the Common Law: and for that cause the Lord chief Justice of the Forests being a most especial judicial

Hesket, in his Reading, fo. 34.

The chief Warden of the Forest, nor his Lieutenant, are no Judicial officers.

judicial place, it was enacted by the Statute of 32. H. 8. cap. 35. that they might make Deputies to execute their offices in writing under their hands, and sealed with the Seals of their Offices, and not otherwise: so that they could not make any such Deputies or Lieutenants to execute their Offices before the making of the same Statute: but there is no such authority given by any Act of Parliament to the chief Warden of the Forest, to make any Lieutenant to execute his office: and therefore, seeing that he doth and may make a Lieutenant under him, his place cannot be a judicial place: and also it appeareth by the Stat. of Anno 1. E. 3. capit. 8. which doth begin thus: Item, whereas divers people be disinherited, ransomed, and undone by the chief Wardens of the Forest on this side Trent, and beyond, &c. and afterwards it doth follow in these words: it is agreed and ordained, that from henceforth no man shall be taken or imprisoned for Wert or Venison, unlesse he be taken with the manner, or else that he be indicted after the form before specified: and then the chief Warden of the Forest shall let him to mainprise untill the Eyre of the Forest, without any thing taking for his deliberance: and if the said Warden will not so do, he shall have a writ out of the Chancery, which hath been in old time ordained for such persons indicted to be at mainprise until the Eyre: and if such Warden after he hath received the writ, do not incontinently deliver such persons indicted without taking any thing: then the plaintiff shall have a writ out of the Chancery to the Sheriff, to attach the said Warden to be before the King at a certain day to answer wherefore he hath not replevied him that is so taken: and the Sheriff (the Verderers being called to him) shall deliver him that is so taken by good mainprise in the presence of the Verderors, and shall deliver the names of the mainpernors to the same

The Statute of An. 1. E. 3. ca. 8.

A Writ de Homine Replegiando.

same Verderers, to answer in the Eyre of the Justices: and if the chief Warden be thereof attainted, the plaintiff shall recover his treble damages, and the said Warden to be committed to Prison and ransomed at the Kings will. And from henceforth it shall be written to them, as to the chief Wardens of the Forest, because they may not be Justices, nor to have any record. And so note, by that Statute, that the writ aforesaid is directed to them, as if it were to the Sheriff, to execute the same writ: and such a writ is not directed to a judicial officer: also the same Statute doth say, that the names of the mainpernors shall be delibered to the Verderers, as if it should say, because they be (as Justices:) and that from henceforth it shall be written to the said Wardens, as to the chief Wardens of the Forest, because, saith the Statute, they (meaning the same wardens) may not be Justices, nor have any record. Wherefore the chief Warden of the Forest, nor his Lieutenant, are no judicial officers: and then I see not by what authority they should sit at the Swanimote.

2 Lieutenants in the Forest. And note, that there are two Lieutenants most commonly in every Forest, viz. the Lieutenant of the Lord Justice in Eyre of the Forest, and the Lieutenant of the chief Warden of the Forest.

3. How often in one year the Swanimote shall be holden: and what Officers, Freeholders and others, owe their attendance there.

Charta de foresta, art. 8. The letter of Charta de Foresta, cap. 8. is as followeth, Nullum Swanimotum de cætero teneatur in regno nostro, nisi ter in anno, videlicet, &c. the chief scope of this branch of the Statute tendeth to this end and purpose, to establish and set down the time certain for the holding of the Courts of the Forest, that is, the Court

Court of Swanimote, and the Forty-day-court, and that for two causes: the first is, because that the officers of the Forest, and all others that shall have any thing to do at these Courts of the Forest, might by this branch of the Statute know the times of these Courts certain, which before were uncertain: the second is, that forasmuch as before the making of this Statute, there was no time certain limited for the holding of these Courts of the Forest: and therefore the chief Wardens and Foresters of the Forest did hold the Courts of Swanimotes as often as they themselves would, and constrained the people which did dwell within Forests thereby to appear at these Courts so often, that the same was a great oppression unto all the people of the Forests within this Realm: and oftentimes great exactions were paid by the inhabitants of Forests to the officers of the Forest, to have their favour and friendship, rather then they would appear so often at these Courts: Therefore now these mischiefs are avoided and provided for by this Statute, which willeth and appointeth that from the time of the making of this statute, the Courts of Swanimote shall be holden but thrice in the year: and the statute doth also there set down at what days in the year the same Court shall be kept, and where, and what officers and other persons shall be compelled to appear there, and to give their attendance at these Courts, as the same doth appear by the Statute it self, in the beginning of this book. And whereas the letter of the stat. is, that no Swanimote from henceforth shall be kept within this our Realm, but thrice in the year: First, the 15. day before Michaelmas, when that our Agisters of our woods do come together to take agistment in our demesne woods. And about the Feast of Saint Martin, in winter, when that our Agisters shall receive our pawnage: and to these two Swanimotes shall come our Foresters,

See the stat. and there note three things: 1 How often the Swanimote shall be holden in a yeer. 2 At what days in the yeer they shall be holden. 3 What officers shall be there.

resters, Verderers, Agisters, and none other, by distresse. The third Swanimote shall be kept in the beginning of 15 dayes before the Feast of Saint John the Baptist, when that our Agisters do meet together to Fawn our Deer. And at this Swanimote shall meet our Forresters, Verderers, and none other, by distresse. Yet nevertheless it is to be understood, that as the Law is now at this day, all the Officers of the Forest ought to appear at every Swanimote, as the Verderers, Regarders, Agisters, Woodwards, and all other persons within the compasse of the Forest, which are Freeholders, and also de qualibet villata quatuor homines, & propositus, that is to say, of every Town and Village within the Forest, the four men, and the Reve: for although that this Statute of Charta de Foresta were made in the negative of the Law and usage that was before the time of the making of the same, prohibiting thereby that no other person but only those before recited shall be compelled to come to the said Courts of Swanimote by distresse, yet that Law is now altered by a latter Statute made in Anno 34. Edwardi primi, called Ordinatio Forestæ, cap. 1. And also by a Statute made in Anno 1. Edward. 3. Capit. 8. For the words of the words of the Statute of 34. Edward 1. are these, viz. First we have decreed for us and our Heirs, that of trespasses hereafter to be done in our Forests of green hugh and of hunting, the Forresters within whose Bailiwicks such trespasses shall happen to be committed, shall present the same at their next Swanimote, before the Forresters, Verderers, Regarders, Agisters, and other Ministers of the same Forest: and upon such presentments there before the Forresters, Verderers, and all other Ministers aforesaid, by the Oath as well of Knights as of other honest and lawful men of the neerest parts where the trespasse so presented shall be done, not

Vide Assisa Forestæ, art. 7.

Ordinatio Forestæ, 34. E. 1.

An. 1. E. 3. ca. 8.

not ſuſpected, by whom the truth of the matter may be fully inquired of; and the truth ſo inquired of, the preſentments ſhall be ſolemnly affirmed and ſealed with their Seals, by the common agreement and aſſent of all the Miniſters aforeſaid. And if the indictment be made in any other manner, the ſame ſhall be utterly void. So that now it doth appear by this latter Statute, that the Foreſters, Verderers, Regarders, Agiſters, and all other Miniſters of the Foreſt, and alſo the Freeholders, and all other honeſt and lawful men of the Foreſt, muſt of neceſſity appear at the Courts of Swanimote, according to the later Statute, for otherwiſe the indictments that are there made againſt treſpaſſers of the Foreſt are void: for all the Officers of the Foreſt muſt affirm the ſame indictment, and the party indicted muſt be indicted before all the Officers of the Foreſt: wherefore all the Officers of the Foreſt muſt of neceſſity by this ſtatute come to the Swanimote Court: and if it do chance any of the ſaid Officers or Miniſters to die, or by ſickneſſe or any other means to be hindered, ſo that he cannot be at the Swanimote, then the Juſtice of the Foreſt or his Lieutenant ſhall immediately put another in his place: and this is according to Ordinatio Foreſtæ, 34. E. 1. cap. 2. that the indictment may be made by all, in form aforeſaid. And there alſo muſt be at the Court of Swanimote the Freeholders of the foreſt, & other good and lawful men, for to make inqueſts and juries there: for the preſentments there (by the words of the Statute aforeſaid) muſt be made per ſacramentum tam militum quam aliorum proborum & legalium hominum de partibus vicinioribus ubi, &c. wherefore there muſt be freeholders and other honeſt men, of neceſſity (which alſo may be proved by the words of the Statute 7. Richard 2. cap. 3. before fol. 13.) notwithſtanding the words of the ſaid Statute

Officers.

See before ca. 21, diviſ. 3.

Freeholders.

1. E. 3. ca. 8.

of Charta de Foresta aforesaid: and therefore although that the statute doth speak but of three sorts of Officers, that is to say, of Foresters, Verderers, and Regarders, that are compellable to come to the Court of Swanimote by distresse; and also saith farther, Et nulli alii per districtionem: yet notwithstanding the Regarders, Woodwards, and all other Officers of the forest, and also all the freeholders within the forest, and the four men and the Reve of every Village within the forest must come to the said Courts of Swanimote and give their attendance there: for if any of them do make default at any Court of Swanimote that is holden within the forest, every such defaulter shall be amerced for the same default, and the same amercement shall be estreated out to the chief warden of the Forest to levy the same by distresse: and so by this means every person that ought to give any attendance at the Courts of Swanimote shall be compelled to come to the said Courts of Swanimote by distresse, notwithstanding the letter of the statute aforesaid.

Amerced for default of apparance.

Steward.

It is here to be noted what is meant by these words in the said statute of Ordinatio Forestæ, ca. 1. ac aliis earundem Forestarum ministris; for other ministers of the Forest are stewards of the Swanimote, who ought to be men very well learned, and especially in the Laws of the forest: and to prove that there ought to be a steward at every Swanimote, it appeareth by the Assises and Customs of the forest, made Anno 6. E. 1. cap. 22. (before fol. 10.) where it is said, Quòd homo attachiatus pro ramis cæsis, placitum illud pertinet ad Swanimotum coram Seneschallo, &c. A man attached for cutting of boughs, that plea appertaineth to the Swanimote before the stewards.

Assisa & consuetudines Forestæ, ca. 22.

4. That

4. That upon default of apparance, the defaulters may be compelled to appear by Diſtreſſe: and how thoſe Diſtreſſes ought to be taken.

The letter of Charta de Foreſta, cap. 8. is further (as is aforeſaid) & nulli alii per diſtrictionem. Now it is to be ſeen what is meant by this word (per diſtrictionem:) and for that, it is to be underſtood, that if any of the Officers of the Foreſt, or others, which ought to give any attendance at the ſaid Courts of Swanimote, will not come to the ſame, but do make default there: then that default there ſhall be inrolled in the Rolls of the ſaid Court of Swanimote; and upon that inrollment, by the Verderers and the Steward of the Swanimote, or his Clerk or deputy there, by the Oath of the other Officers of the ſame Court, thoſe which do make default ſhall be amerced, and that amercement there ſhall be aſſeſſed alſo and eſtreated preſently to the chief Warden of the Foreſt, or to his Deputy, or to the Bedle of the Foreſt (which is an Officer to go throughout all the Foreſt, like unto the Sheriffs ſpecial Bailiff) to be levied by diſtreſſe. But in this caſe the Verderers may chuſe, if they will, whether that they will ſo eſtreat the ſaid amercements upon the defaulters preſently by diſtreſſe, as is aforeſaid, or elſe to certifie thoſe defaults in their Rolls before the Juſtices of the Foreſt, and then the Juſtices of the Foreſt will cauſe writs to be made out to the chief Warden of the Foreſt, or to the Sheriff of the Shire where ſuch defaulters do dwell, to levy thoſe ſaid amercements by diſtreſſe; or elſe the Verderers if they will may certifie thoſe defaults into the Court of Exchequer before the Barons of the ſaid Court of Exchequer, and then

What is meant by this word diſtreſs.

thereupon the Barons of the Exchequer will cause process to be made out to the Sheriff of the Shire to leby the said amercements by distress. And there are sundry very good presidents to warrant either of these three ways aforesaid.

And concerning distresses, as I take it, those that do make defaults at the said Courts of Swanimote, and the same defaults being recorded, then the defaulters may be distrained to appear at the next Swanimote of common right: like as upon an original, where a man is summoned and doth not appear, afterwards a distress shall go out immediately against him, and then, as it seemeth, those that do make default there shall be bound to a double distresse by reason of that default, that is to say, one distress for the amercement, by reason of his non apparance pro secta sua non facta, and another for a new apparance at the next Swanimote, be it suit real or suit service: or else by direct process of common right, like unto a distresse against a Juror to distresse him to come to the next Swanimote.

The nature of a distresse.

But now for the better understanding of the word distresse, I will here speak something concerning the nature of the same: and where distresses may be lawfully made and taken, in such cases which do concern Swanimotes: and what things may lawfully be had or taken in execution for distresses. And for that it is to be understood, that if an Officer of the Forest do make default at any Court of Swanimote, then the chief Warden of the Forest, or his Lieutenant, or the Bedle of the Forest may distrain him for that amercement, viz. of three shillings, or more or lesse, in any land that he hath, or doth hold by reason of his office, if he do hold any land so: and in the like manner, he may distrain any other land that he hath within the Forest, although that the same do not appertain unto his office:

How distresses ought to be taken.

but

but he cannot diſtrain him out of the Foreſt in his lands: but he may diſtrain the goods or chattels of that Officer, although that they be in the lands of any other man within the Foreſt. And the ſame Law is of every other man that ought to appear at the ſaid Courts of Swanimote, as the four men and the Reve, Bailiff, Conſtable, Tithingman, Freeholder, or Juror, which is ſummoned to appear at the ſaid Court of Swanimote, to be of any Jury for the Kings Majeſty, or any other ſervice there, as in the caſes aforeſaid. And if the ſaid chief warden of the Foreſt, or his Lieutenant, or the ſaid Bedle of the Foreſt, which ought to diſtrain, cannot find any diſtreſſe of his within the Foreſt, then he ought to certifie the ſame before the Juſtices of the Foreſt: and upon a Teſtatum there, that ſuch a perſon which ought to appear at the Court of Swanimote in ſuch a Foreſt did make default, and for the ſame was amerced, and that he hath not any lands nor goods within the Foreſt that he may be diſtrained by, but that he hath ſufficient lands within ſuch a County which is out of the Foreſt, then upon that Teſtatum, there ſhall go a writ or precept to the Sheriff of the ſaid forrein County which is out of the Foreſt, where he hath ſufficient of lands, ad diſtringendum terras & tenementa cujuſdam A. B. comitat' illo, &c. And then by vertue of that writ or precept the Sheriff may lawfully diſtrain him there for that amercement: and ſo you may ſee that the Juſtices of the Foreſt upon ſuch a Teſtatum, as is aforeſaid, may cauſe a writ or precept to be made to the Sheriff of a forrein County, that is out of the Foreſt, to levy ſuch amercement by diſtreſſe: and yet they are not properly Juſtices within the ſaid Counties, but Juſtices of the Foreſt within thoſe Counties: and this is affirmed by the opinion of M. Hesker.

No diſtreſs within the Foreſt.

Teſtatum.

M. Hesker, f. 37.

And if the Bedle of the Forest or other Officer do come to destrain for such an amercement in the Forest, and the owner of the same goods (which are to be distrained) knowing thereof, by cabin doth come before that the said Bedle or other officer hath distrained them, and doth convey them away out of the Forest: in this case, although that such an Officer do freshly pursue them, yet he cannot lawfully take those goods nor distrain them being out of the bounds of the Forest. But if such an Officer had taken and once seised the beasts of the defaulter for such an amercement lawfully as a distresse, and then the owner by force had taken them from him, and so driven them out of the Forest: then the said Bedle or Officer may make hue and cry, and freshly pursue after him, and so take those beasts from the said rescuer in any place wheresoeber out of the Forest.

Fresh suit.

And the same Law is, if a stranger do take those beasts from the Bedle or Officer after that he hath distrained them, and then doth deliver them to the first owner again, which doth drive them out of the Forest: then the said Bedle or Officer may lawfully pursue them and take them again. But if that the beasts distrained, ut supra, do come back to the owner again into his land that is out of the bounds of the Forest, by the negligence of the Bedle or Officer that ought to have impounded them, then the Officer cannot take them again: for now the first distresse is determined by the coming back again of those beasts to the first owner, which is done without his Act: for in this case it is not like to a rescous, where the owner of those beasts doth come to the possession of them again by his own wrong.

M. Hoker, f. 38.

But if the Bedle or other Officer do distrain for any amercement, ut supra, and then doth deliver the same beasts which he hath taken by distress to a stranger to

keep

keep to his own use, whereby the stranger to whom they were delibered so to keep, doth drive them to his own land being within the Forest, and afterwards the owner of those beasts doth take them out of his land that hath the keeping of them, and drive them out of the Forest: in this case the Bedle nor other Officer cannot take them again now being out of the Forest. But otherwise it is, if that the Bedle or other Officer had taken the distresse and delibered the beest unto a stranger to keep as a distresse: in this case, if the owner take them, and do drive them out of the Forest, yet the Bedle or other Officer may freshly pursue them, and take them again from him, although that they be without the Forest, in a forrein County. Note the difference where such beasts were delibered to be kept as a distresse, and where to be kept to his own use.

If an Officer of the Forest, or other person that ought to appear at the Swanimote Court, have land within the Forest, and the beasts of a stranger do escape into his land, by reason whereof the land-tenant doth distrain them and put them in the Pound in the same land, as in a Pound: and then afterwards if the Bedle of the Forest doth find them there so levant and couchant, he may distrain them for that amercement: but otherwise it is, if those beasts were never levant and couchant there.

If the Bedle of the Forest, or other Officer, do break the close or the land that is inclosed with a ditch, and a hedge, and a gate with a lock to it, and doth there distrain for such amercement of the same man to whom the land doth belong: that distresse is not lawfully taken there. And otherwise it is, if such Officers do distrain such beasts in the highway within the Forest, out of any close or inclosure.

And if one be amerced, ut supra, and after that he

is

is so amerced, he doth deliver his beasts and his goods that he hath so within the Forest to another in pledge or in mortgage: there the Bedle of the Forest nor other Officer cannot afterwards distrain them during the pledge or mortgage.

But otherwise it is, where issues are returned upon the Lands of a Freeholder within the Forest, which hath made default and lost the issues, and afterwards he doth alien that land: there the said Bedle may distrain in that land that is aliened for those Issues that are lost. And thus much concerning distresse.

It were a thing very necessary, here in this place, to shew of what things distresses may lawfully be made and taken: but because that the same is a matter that doth altogether follow the course of the Common Law, I will here omit it, and refer you to the Register of Writs, in titulo Distresses, for that matter.

5. About what matters the Jurisdiction of the Swanimote is exercised.

The power of the Swanimote.

IT is to be understood, that the Court of Swanimote is a Court of the Forest, which should be holden three times in the year, as is aforesaid, for to inquire of Vert and Venison, and other trespasses that are done within the Forest: and there all the trespasses of the Forest shall be inquired of and presented: and that is proved by Ordinatio Forestæ, made anno 34. E. 1. and by the Statute made in the first year of E. 1. cap. 8. for it is manifest by the said Statutes, that all offences done or committed within the forest, either in Vert or Venison, shall be presented at the next Swanimote; and the Statute doth set down in what Order, and before whom it must be done, viz. Coram Forestariis, Viridariis, Regardatoribus, Agistatoribus, & aliis earundem Foresta-

Ordinatio Forestæ, 34. E 1. an 1. E. 3. cap. 8.

Foreſtarum miniſtris, &c. Et ſi in alio modo fiat Indictamentum, pro nullo penitus habeatur: which doth not only ſhew that all offences done within the Foreſt, in Vert or Venison, are only to be preſented before the Officers of the Foreſt, but it doth perfectly appoint the manner how the ſame ſhall be done; and if it be done in any other manner than there is ſet down, the ſame ſhall be void. And hereof ſee more before in the 17. Chapter, and the third Diviſion.

See Chapter 16. Diviſion 7. that the Regarders are to preſent, at the next Swanimote after their Regard, what Aſtibes are kept within the Foreſt unexpeditated, and how the Court of Swanimote is to proceed in that buſineſs.

See alſo before, Chapter 20. Diviſion 14. that offences in the Purlieus ſhall be tried at the Swanimote. And (in a word) the Court of Swanimote hath power of all thoſe matters that do hereafter appear in the charge of the Swanimote, and to take Preſentments of all ſuch matters: but no Judgement ſhall be given there, nor Execution awarded: for that is reſerved to the Juſtices of the Forests only. This Court may inquire de ſupervenatione foreſtarior. & aliorum miniſtrorum foreſtæ, & de eorum oppreſſionibus populo illatis. And this Court may not only inquire, but convict alſo: yet not give judgement, Co. 4. Inſt. 289.

6. Of Indictments or Preſentments in the Swanimote Court: and what Indictments or Preſentments of the Foreſt are traverſable, and what not: and of Outlawry.

At every Court of Swanimote, all the Preſentments of the Foreſters for any offence in the Foreſt, either in Vert or Venison, are there delibered to the

the Jury, which are sworn for that purpose to inquire the truth of those matters: and if the Jury do find that those Presentments that the Foresters have presented be true, then the offender against whom they are presented, doth stand convicted thereof in Law, and shall not per assisas Forestæ traverse any such indictment: for the entries of the Records there are thus:

An Indictment in the Swanimote is not traversable. Co. 4. Inst. 290.

Præsentatum est per Forestarios & duodecem jurat' wardæ prædict', & convictum per viridarios, quòd A. B. tali die & Anno intravit forestam de P. cum arcubus & sagittis, & ibid. versavit unam Damam ad mortem, & carnes cepit, & inde fecit voluntatem suam. Et testatum est per vicecom. quòd prædictus A. B. non est inventus, nec aliquid habet in Balliva sua per quod attachiari potest, nec prius se reddidit, nec scitur quo devenitur, ideo exigatur de comitatu in com. quousque, &c. utlagetur si non comparuerit, & si comparuerit, tunc vicecomes eum capiat, & salvò, &c. ad satisfaciendum domino regi de transgressione prædicta unde per Forestarios viridarios & alios ministros convictus est: by which form of presentment you may perceive, that the offences in Swanimotes are presented there by the Foresters, and the twelve sworn men, and the offenders thereof are convicted by the verderers: so that an indictment against an offender in the Forest, for any offence there being taken and found against him in the Swanimote, the same is a conviction in Law against him that is such an offender: so that he shall not by the Laws of the Forest traverse any such indictment.

The form of an indictment in the Swanimote. Note, the words of a presentment in the Swanimote are, Presentat. est per forestarios & duodecem juratores, & convict' per viridarios. And the words of a presentment in the Court of Attachments are, Presentatum est per forestari', tant'. Assisa forestæ, de Lanc. f. 11. Vid. the stat. called Ordinatio Forestæ, an. 34. E. 1. in what manner offenders shall be indicted in the Swanimote.

But it is to be noted, that all indictments or presentments, which shall be made by the Foresters and the Jury, or twelve sworn men, against any offender for any offence done in the Forest, in vert or venison, before the Lord Justice in Eyre of the Forest, at his Seat or Sessions of the Forest, are traversable per assisas forestæ, as it

An Indictment before the L. chief Just. of the Forest is traversable. Co. 4. Inst. 290, 291.

was

was adjudged by the whole bench at the Justice seat holden at Waltham holy Crosse, in the County of Essex, before the good Earl of Bedford, then Lord Justice in Eyre of all the Forests on this side Trent, in July, Anno Regni Elizabethæ 24. where certain indictments were presented there by the Foresters and the Jury against I. West, Wil. Fiswike, and others, and they were all traversed, because they were not presented at a Swanimote. Anno Elizabethæ 24.

Farthermore it is to be understood, that there is also a manner of proceeding against offenders in Forests, by way of outlawries; as if any man be indicted for an offence in the Forest, and the offender do dwell in another County out of the Forest, so that he cannot be attached for the same offence by the Foresters: then the same offender may be outlawed for his trespasse, and the proceeding therein against such an offender is in the very same manner as it is at the Common Law; for as at the Common Law, he that is outlawed for any manner of trespasse, the order is that he must at five several Counties be exacted or proclaimed, and then after that he is quinquies exact', or five times proclaimed, then the Coroner for his contempt in not appearing, doth give judgment that he that is quinquies exactus in that manner, shall be out of the Kings Majesties peace, and so taken as an outlaw, and then such a person is fully outlawed. Even so is it per assisam forestæ: for he that is to be outlawed for any offence in the Forest, must after the very same manner be proclaimed as it is used at the Common Law; and then when such an offender is quinquies exactus, he is fully outlawed; and by that outlawry the Kings Majesty shall have the forfeiture of his goods and chattels, and also the profits of his lands that is so outlawed, by the inquisition of the Sheriff and the Coroners. And also all that are indicted in the Swanimote by

A trespasser in the forest shall be outlawed for his offence, as M. Hesker, in his reading of the Forest, doth affirm, f. 19.

M. Fleetwood, in his collection of the Forest Laws, f. 8. M. Hesker, in his reading, f. 16.

by theſe words, Quòd ſunt communes malefactores de venatione domini Regis in Foreſta, &c. ſhall be purſued according to the aforeſaid preſident.

7. The charge given in the Swanimote.

NOw inſueth the charge of the Court of Swanimote for the Foreſt: and here it is to be noted, that there is a Statute made in the ſeventh year of King Richard the Second (before fol. 13. b.) whereby (at the
7. R. 2. cap. 3. grievous complaint then made of the miniſters of the Foreſt) it is enacted, That no manner of Jury ſhould be compelled by any miniſter of the Foreſt to travel from place to place, out of the place where their charge is given them, againſt their will: nor ſhould be conſtrained to ſay their verdict of a treſpaſs done in the Foreſt, againſt their conſcience.

The charge. Imprimis, you ſhall inquire if all thoſe that owe ſuit to this Court of Swanimote be here, or not, and thoſe which be not, you ſhall preſent their names.

Conſuetudines, cap. 8. 2 Item, if there be any aſſarts or purpreſtures within the Foreſt newly made, more than hath been made by the Kings grant, or any of his Progenitours, in what place the ſame is, and by what authority, by
Anno 7. Eliz. Dyer, 14. b. whom, and what harm it is to the King, except it be arrented.

This is purpreſture. 3 Item, if there be any that maketh any great cloſes or ſmall cloſes, which are annexed to the borders of the Foreſt; and inlargeth his own ground with ſetting out of his hedges and ditches, and ſo ſtraitneth the Foreſt.

This is a Treſpaſs and Purpreſture; for Omnes metæ Foreſtæ ſunt integrò domino Regi. 4 Item, if any man have raiſed, digged up, or carried away any land-ſtone, or ſtake that was ſet or laid for any mark or bound of the Foreſt, ye ſhall do us to weet of their names, the day and place when the ſame was done.

5 Item,

5 Item, if any man maketh any Pynes, Clay-pits, or turbeth for Iron, without licenſe, in any place within the Foreſt.

6 Item, if any man lebieth any Mill within the Foreſt, without the Kings licenſe, you ſhall inquire what hurt the ſame is to the Foreſt, and who it is that doth ſo, and preſent the ſame.

7 Item, if any habe made any ſwine-houſe, or ſhep-houſe, or any other houſe or cote within the lands of the Foreſt without licenſe, you ſhall preſent it.

8 Item, if there be more Foreſters or Walkers within the Foreſt then habe bẽn of old time accuſtomed, in oppreſſing of the Kings people, or obercharging of the Foreſt, who hath made them, and by what authority he hath done it.

9 Item, if there be any miniſter of the Foreſt, that maketh any oppreſſions or extortions of the Kings people, by colour ꝑ he is an officer of the foreſt, & for taking exceſs chiminage; if any ſuch be, you ſhall preſent them.

10 Item, if any man come into the Foreſt in Fawning time, with ſhẽp or any other cattel, where they habe common, and is not ſworn to be true to the Kings Game.

11 Item, if there be any man that doth burn any Heath, or Fearn, or Ling, within the Foreſt or Towns next adjoyning to the ſame Foreſt, you ſhall preſent the ſame.

12 Item, touching the Kings Vert, that is to ſay, Woods, you ſhall inquire, if any habe come into this Foreſt, and habe felled any great oaks, and carried them away by night or by day, being the Kings wood, and the price of the Horſe, Cart, and Trees ſo carried, and by what authority.

13 Item, of ſmall wood, as underwood, ſparres, blackthorne, watling-rods, and ſuch like, if any cut or fell them,

them, and carry them away, you shall present his name, and the price of the wood so taken.

14 Item, if the Wardens of the Forest or their Lieutenants, or any Forester browseth any waste boughs or great oaks in Winter time, more for his own advantage for the sale, than for the sustenance of the Kings Deer, ye shall do us to wet thereof, and the names, and the price of the wood.

15 Item, if any man do take out of the hollow-trees any Hony, Wax, or swarms of Bees within the Forest, ye shall do us to wet.

16 Item, if any man take any hawks-egs, herons-egs, pheasants-egs, or partridges-egs out of their nests being within the Forest, you shall do us to wet.

17 Item, if any man have any warrant of the Lord Chancellor of England, Lord privy Seal, or of the Kings Justices of the Forest, to have certain trees; if he have taken more than his warrant will serve for, or if he have taken the said trees without view of the Verderers, or of the Foresters, you shall do us to wet.

18 Item, if any warrant were granted for any oaks, or other timber to be imployed to the Kings use, or on his works; if any man have bestowed them to their own peculiar use, or otherwise conveyed them, or sold them, you shall present the price thereof, and who he is that hath done so.

19 Item, if any commission were directed to any wood-sellers for the sale of the great woods and underwoods, or either of them; if the same Wood-seller have made the hedges and fencing of the coppices, for saving the Kings Covert.

20 Also, if any of the said wood-sellers have concealed any thing of the K. profit upon their account, or if they have inclosed any moors, great plains, or waste grounds, to the hurt of the commoners, or put any other cattel into

to the Coppices and Spring, or Wood than is allowed by the Statute, you ſhall preſent the ſame.

21 Item, in pawnage time, if there be any that hath woods annexed to the Kings foreſt, and maketh percourſe out of his own wood with Swine and Pigs into the Foreſt, in hinderance of the Kings pawnage, of all ſuch you ſhall do us to wit, both of the number and of the price of them; for they are forfeitable to the King.

22 Item, if any man habe any Swine coming into the Foreſt in pawnage time unringed, wrouting, delving, or turning up the Kings ſoyl, which is the cauſe of exilation of the Kings Deer, ye ſhall do us to wit of the number, and of the price of them; for they are forfeitable to the King.

23 Item, if there be any man that hath any Patent by the grant of any King, and confirmed, or any ſpecialty allowed to him before any Juſtice in Eyre, for a certain number of Swine to run in pawnage time in the Kings Foreſt; if he habe more than is allowed in his Patent ye ſhall do us to wit of the number and price; for they are forfeitable to the King.

24 Item, if there be any Swine not ringed, or goats that habe been attached ſithence the laſt Seſſions within the Foreſt, ye ſhall preſent the number and price of them; for they are forfeitable by the firſt attachment to the King, for that they be not beaſts commonable.

25 Item, if there be any Sheep running in the Foreſt, and hath been attached three times ſithence the laſt Seſſions, ye ſhall preſent the number and price; for they are likewiſe forfeitable to the King.

26 Item, you ſhall inquire if there be any that hath hunted the Kings Deer within ſeven miles about the Foreſt, at any time within fourty days next after the Kings hunting, or fourty days before it was ſo hunted, for theſe cauſes; firſt, for that the King before his hunting, or his Commiſſion to kill the Deer, his Grace ſhould Veniſon. Puraley. Canut. Can. 31.

habe a ſight of the Deer where they lie at reſt in their haunt; and after his hunting, becauſe the Deer being driben out with ſtrength of Hounds, and noiſe of Men and Horns, may afterwards reſort again to their haunt in the Foreſt; if there be any ſuch, you ſhall do us to weet.

27 Item, if any man habe any great Park, or great Cloſe, within three miles of the Foreſt, that habe any ſaltaries, or great gaps, called Deer lopes, to receibe Deer into them when they be in chaſing, and when they are in them they cannot get out again.

Sakaries.

28 Item, if any man habe ſlain any of the Kings Deer within the Foreſt without warrant, you ſhall preſent his name, and what Deer was ſo ſlain, and within whoſe walke the ſame was done.

29 Item, if any man had any warrant for to habe any Deer, if he habe taken more Deer than is mentioned in his Warrant; how many they were; what Deer they were, and of what ſeaſon? (for a Buck in Winter is out of ſeaſon, and ſo is a Doe in Summer;) and whether he toke the Deer comprehended in the Warrant without ſight of the Verderers and Foreſters, yea, or no.

30 Item, if any man keep any hounds or dogs, and riding or going thorow the Foreſt, as the high ways do lye, taketh not up his dogs, but doth ſuffer his dogs to chaſe and kill the Kings Deer, whether the death of ſuch Deer be within the Foreſt, or without, you ſhall preſent the name of the man, and the Deer ſo killed.

See the ſtat. 3. Jac. cap. 13.

31 Item, if any man take any Deer with Nets, Cords, Ropes, Double Pater noſter Backſtalls, or other Engine; and who doth keep any ſuch Engines within the Foreſt, or near to it, ye ſhall preſent their names.

32 Item,

32 Item, if any man chase, course, or set any Net or Engine, though he kill not, you shall present his name and fact, and where the same was done, and when.

33 Item, if any man come into the Forest, and there slay any Fox, Hare, Conie, or any other beast or fowl of Warren without authority, the same is to be punished for the breach of the Kings free Chase, and therefore you shall do us to wet.

34 Item, if there are any manner of Rents or Services, Wax, or Honey, due to the King or any of his Officers of this Forest, that are now behind, or withdrawn, by whom, how long, what it is, and what damage it is to the King, you shall also do us to wet.

35 Item, if there be any man that dwelleth about the borders of the Forest, which keepeth any strange Greyhound, and waiteth when the Kings Deer are out of the Forest, and forestalleth the same Deer, so that they may not return home again, and so by that means are slain or hurt, ye shall present who he is, and who owneth the Greyhounds, that he may be punished for the same accordingly.

36 Item, if there be any person within the jurisdiction of this Court that keepeth any hounds or greyhounds that may not dispend 10 l. by the year of land of inheritance, or 30 l. by the year of free-hold land, or is not possessed of goods and chattels to the value of 200 l. or that is not the son of a Knight or Baron, or of some person of higher degree, or the son and heir apparent of an Esquire, according to the Statute, which hunteth in the Purlieu, as of his own authority, you shall present his name, the time, and what damage he did to the King in diminishing the game at such hunting. 1 Jac. cap. 27.

37 Item, if any Purlieu hunter hunt oftener than thrice in a week, or before the Sun rising, or after the Sun setting, or with other than his own menial ser-

The defence moneth is 15. days before Midsummer, and 15. after.

haunts, or otherwise on Sundays, or in the fence Moneth, which is at the time of Fawning, and that is accounted fifteen days before Midsummer, and fifteen days after Midsummer.

38 Item, if any Purlieu hunter at any time forestall the Kings Deer, whether it be with dead Hay, or with quick; for they ought to let run at the tail of the Deer, otherwise it is finable, as if he did hunt in the Forest.

39 Item, if any person habe made any Coppices or closure of Purlieu, in estraiting of the Kings Deer from the Forest, to the hurt of the owners, or do pin the beasts of any Commoner out of the Shire, and not put them in open pound in the County, whether it be in Pawnage time or not, you shall do us to weet.

40 Item, if any man gather any Acorns or Crabs in the Forest, and do make sale of them at Markets or elsewhere, to the hurt of the commoners, and the Kings beasts of the Forest, ye shall do us to weet.

41 Item, if any man habe stopped or straited any Church-way, Mill-way, or other ways in the Forest or Purlieu, to the common Nusance of the Kings free people, and to the hurt of his Deer, you shall do us to weet thereof.

42 Item, if any man habe any Hills within the Forest which are not repaired as they ought to be, you shall do us to weet.

43 Item, you shall present all the Waifs and Strays which habe been and happened since the last Court within the Forest.

44 Item, if any man take any agistment in the Forest or Purlieu, to the hurt of the Kings Deer and the Commoners there, you shall do us to weet.

45 Item, if there be any man that doth surcharge the Common with any manner of cattel, or otherwise, more than

than the Law doth ſuffer, according to the quantity of his tenure or grant, you ſhall do us to wet: And of theſe and all other that you do know to be any offence, either in Vert or Venison, or againſt the Laws of the Foreſt, you ſhall inquire thereof, and preſent the ſame.

And there are alſo many other things to be inquired of, which cannot be done without Inqueſt, which muſt be by the ſuiters to the Court. And when they are there preſented, they ſhall be ſealed with the ſeals of the Miniſters aforeſaid, and ſent before the Juſtices of the Foreſt to the Seſſions: And if the Preſentments be not certified in this order, they are void.

And thus endeth the Charge.

CHAP. XXIIII.

1. *That the Laws of the Foreſt differ from the Common Law of the Realm: And of the Dignity and Authority of the Lord Chief Juſtice of the Foreſt.*
2. *Of the Warrant of General Summons of the Lord Chief Juſtice of the Foreſt to the Sheriff, to warn the Seſſions; and of his Warrant of General Summons to the Chief Warden of the Foreſt.*
3. *What perſons ought to appear at the Juſtice ſeat before the Lord Juſtice of the Foreſt by general Summons, and what not.*
4. *Of appearance in proper perſon, by Atturney, by Gardein, by Prochein amy: Of appearance of a perſon let to bail or mainprize: Difference between bail and mainprize.*
5. *The manner of holding the High Court of the Lord Chief Juſtice in Eyre of the Foreſt, commonly called the Juſtice ſeat of the Foreſt, and the charge given there to the Jury.*

1. That the Laws of the Foreſt differ from the common law of the Realm: and of the dignity and authority of the Lord Chief Juſtice of the Foreſt.

Before the making of Charta de Foreſta there was no Law certain for offences committed in foreſts; for at the beginning it was at the pleaſure and arbitrement of the King to puniſh offenders in foreſts, until that King Canutus and others did make certain Canons and conſtitutions for maintenance of Vert and Veniſon, which Conſtitutions afterwards, by continuance of time, were taken for a Law, and ſuch Laws were not certain neither, before the making of Charta de Foreſta: But the Laws of the Foreſt were always differing from the laws of this Realm, as it doth appear in a Book remaining in the Exchequer, called Liber Rubrus, where it is written as followeth;

Libro Rubro Scaccarii.

Sané foreſtarum Lex, ratio, pœna quoque vel abſolutio delinquentium, ſive pecuniaria fuerit, ſive corporalis, ſeorſum ab aliis regni judiciis ſecernuntur: Et ſolius Regis arbitrio ſeu cujuſlibet familiaris ad hæc ſpecialiter deputati ſubjicitur, legibus quidem propriis ſubſtitit, quæ non Jure communi ſed voluntaria principum Inſtitutione ſubnixæ eſſe debent: adéo ut quod per legem ejus factum fuerit non juſtum abſolutè, ſed juſtum ſecundùm legem foreſtæ dicatur, quia in foreſtis penetralia regum ſunt, & eorum maximè deliciæ, ad has quidem venandi cauſa, curis quandoque depoſitis, accedunt, ut modica quiete recreentur illic, Seriis ſimul & multis Curiæ tumultibus omiſſis, in naturalis libertatis gratiam, pauliſper reſpirant; unde fit, ut delinquentes in ea, ſoli Regiæ, ſubjiceant animadverſioni; which in Engliſh is this: Truly (ſaith the ſaid Book)

Book) the Laws of the Forest, the reason, and punishment, the pardon or absolution of the offenders, whether the same be pecuniary or corporal, they are differing from other Judgments of the Laws of the Realm, and are subject unto the Judgments of the King only, to determine at his will and pleasure, or of some of his Nobles thereunto especially appointed for that purpose, which foresaid Law, Reason, Punishment, and Pardon, shall not be tied to the order of the Common Law of this Realm, but unto the voluntary appointment of the Prince; so that the same which by his Law in that behalf shall be appointed or determined, may not be accounted or called absolute Justice or Law, but Justice or Law according to the Laws of the forests: Because that in the forests there are the secret pleasures and Princely delights of the Kings; For Kings and Princes do resort to the forest for their pleasure of hunting, having for that time laid aside all cares, to the end that they might there be refreshed with some quiet, being wearied with the continual business of the Court, they might (as it were) breath a while for the refreshing of their free liberty. And thereupon it cometh to pass, that such offenders in Forests, for their offences are subject unto the only Judgment and determination of the King. And so before the making of the Statute of Charta de Foresta, and always since unto this day, the Law of the Forest did differ from the Common Laws of the Realm: And by this Statute the Laws of the Forest, which were not certain before, are now by the same made certain in most things: And whereas the Statute was defective, the same hath been since supplied by other necessary statutes, as you may see before in the beginning of this Book.

By this it appeareth that the lord chief Justice of the forest hath always been one of the noble men of this Realm.

See Co. 4. Inst. 290. the Law of the forest is allowed and bounded by the common Laws of this Realm; Yet the forest Laws differ in many cases from the common Laws of the land. Co. 4. Inst. 315.

And whereas the words before rehearsed are, Et solius Regis arbitrio, seu cujuslibet familiaris ad hæc deputa-

ti: It doth hereby appear, that the office of the Lord chief Justice of the forest is a place both of great honour and of high authority, and that the same place is to be executed by some great Peer of the Realm, that is always one of the Kings most honourable privy Council. And then when that any such Noble person is made Lord chief Justice in Eyre of the Forest, by the Kings especial Commission, he hath by that as great authority as any other Justice in Oyer hath, and more; For then he may punish all trespasses of the forest, according to the Laws of the forest: And he may hear and determine all the claims of the liberties and franchises which be within the forest, as to have Parks, Warrens, and Vinaries; And also of them which do claim to be quit of Assarts and Purprestures, and of them which do claim Lets, Hundreds, Felons goods, Waifs, and Fugitives, and other Liberties within the Forest: and likewise of them which do claim to kill Hares and other beasts of the Chase within the Forest; For by lawful and good claims men may justifie the doing of many things within the forest, which otherwise were unlawful; but those claims must be such claims that have been allowed before the Justice in Eyre within the time of prescription.

The dignity and authority of the Lord chief Justice of the forest.

Claims.

See before, cap. 23. Divis. 6.

The diversity between the Justice of the forest and Justices in Oyer at large, and other Justices, is, That the Justices of the forest shall punish those that are indicted at the Swanimote, and presented before them at their Sessions, by fine and imprisonment at their discretion; and the party indicted shall not traverse it, because he is presented by more persons than by twelve, and that is a condemnation against him: but the Justices in Oyer and other Justices of the peace, if they do determine such trespasses done in the forests, (which by the Law they cannot do:) which is presented before them by way

of

of indictment: then the parties so indicted shall have their traverse allowed them, which they shall not have of the indictment taken in the Swanimote, and tried before the Justices of the forest.

The Lord chief Justice of the forest hath an absolute Authority appointed unto him to determine of offences that are committed and done within the Kings Majesties forests, either in Vert or Venison: And the same offences are to be determined before him, and not before any other Justices, except those that are appointed by his Majesties Commission under the great Seal of England to aid and assist the said Lord Chief Justice in that place, as it doth appear by the Statute of Charta de Foresta, Cap. 16. in these words, as followeth;

There is but one Chief Justice of the Forests on this side Trent, and he is named *Justiciarius Itinerans Forest. &c. citra Trentam.* And there is another *Capitalis Justiciarius* and he is *Itinerans omnium Forestar', &c. ultra Trentam,* who is commonly a man of greater dignity then knowledge in the Laws of the Forest; and therefore when Justice Seats are to be holden, there be associated to him such as the King shall appoint, who, together with him, shall determine *omnia placita forestæ*, with a Patent of *si non omnes*, &c. and a Writ *de admittendo*, &c. and the Chief Justice of the Forest, and these Associates, are *Capitales Justiciarii forestæ*, and named *Capitales*, in respect of the Verderers and others that to some purposes have judicial places, *Co. 4. Inst. 314.*

Nullus Constabularius, Castellanus vel Ballivus teneat placita de foresta, sive de viridi, sive de venatione, sed quilibet forestarius de feodo attachiet placita de foresta, tam de viridi quam de venatione, & ea præsentet viridariis provinciarum, & cum irrotulata fuerint, et sub sigillis viridariorum inclusa, præsententur capitalibus Justiciariis nostris de foresta cum in partes illas venerint ad tenendum placita de foresta, & coram eis terminentur; Has autem libertates de forestis concessimus omnibus, &c. By which words of the Statute, coram eis terminentur, doth exclude any other Justices to hear and determine the said offences of the Forests, but only the Lord Chief Justice of the Forest, and those that

are

are in Commission appointed with him to aid and assist him: For the Statute is in the negative of the common Law, and doth restrain all other Justices, and saith, coram eis terminentur: and in that sence the statute is taken by the learned Judges of the Common Law: For in Anno 21. Hen. 7. fol. 22. the case was thus: En trespas de malefactoribus in parcis, & count que le defendaunt intravit in quandam Forestam, et lopinion del court fuit, que cest Action ne gist mye, si non fit pur misfesans in parcis, Car le statute de Westm. 1. cap. 20. est tantsolement in Parks, et ceo serra pris stricte: Iissint le punishment que est done pur male fesans in Forests est punishable per lestatute de Charta de Foresta, & nemy en auter manner, &c. By which case there are two things to be noted, that is to say, First, that the statute de malefactoribus in parcis doth not extend to a forest, for that a forest and a Park are two distinct things at the common law, and therefore that statute that was made to reform injuries done in the one doth not extend to any hurts done in the other: The second is, that by the said case it doth appear, that by the construction of the statute of Charta de Foresta, made for offenders in the forests, they are to be punished according to the same statute, and not in any other manner, as it doth there more plainly appear.

Anno 21. H. 7. fo. 22.

Stat. West. 1. c. 20. de malefactor. in parcis.

Charta de Foresta cap. 16.

21. H. 7. fol. 30. And in Anno 21. Henric. 7. fol. 30. the case was as followeth: Endictment de occiser de un Hart proclaime trobe debaunt de peace, & lendictment fuit challenge pur ceo que il ne monstre en lendictment en quel lieu le proclamation fuit fait, Et auxy il ne monstre en quel lieu il fuit occise, car si fuit occise hors del bounds del forest, il est loyal a luy de luy occiser: fuit dit per seignior Fineux que il puit pleder cest matter al jurisdiction del court, pur ceo que les Justices del forest determiner' cest matter, &c. By which case these two things are especially to be noted. 1. That

1. That ſuch offences which were committed by any offenders within the foreſt, are to be tried before the Juſtices of the foreſt only, and to be puniſhed there by the foreſt Laws: forasmuch as they are Laws appointed for that purpoſe, differing from all other Laws.

2. That if any man be indicted or called in queſtion for any ſuch offences that are done or committed within any foreſt, either in Vert or Veniſon, in any other place then before the Juſtices of the foreſt, that then every ſuch offender may plead that matter to the juriſdiction of the Court where he ſhall ſo be called in queſtion, and ſhew unto them that the offence for the which he was called in queſtion was done in ſuch a foreſt, and that the Juſtices of the foreſt are to determine that matter only, and that no other perſon hath power or authority to determine that offence.

And farther, by the ſtatute of Ordinatio Foreſtæ it is to be gathered, that all the proceedings againſt offences committed in the foreſt, in any other place then before the Juſtices of the foreſt, ſhall be void: and that none other have power and authority to proceed againſt offenders in the Foreſt, but the Juſtices of the Foreſt only.

Ordinatio Foreſtæ. See before cap. 23. Diviſ. 5. Mich. 9. E. 1. Coram Rege H. 6. Huntingdon tranſgreſſio in foreſta Regis non eſt fac. terminando Se. Kelw. 150.

2. Of the Warrant of General Summons of the Lord Chief Juſtice of the Foreſt to the Sheriff, to warn the Seſſions: and of his Warrant of General Summons to the Chief Warden of the Foreſt.

THoſe which be Juſtices of the Foreſt, when they have their Commiſſion from the King, for the keeping and holding of the Juſtice Seat there, They ſhall make their Warrant and Precept to the Sheriff of the Shire, within which the ſame foreſt, where the Juſtice ſeat

The warrant of the lord Juſtice in Eyre to warn the Seſſions of the foreſt.

reat shalbe holden, which said Precept is in these words: Thomas Lovel nobilis ordinis Garterii miles, Justiciarius Itinerans omnium forestarum domini regis in Anglia, tam citra Trentam quam ultra, Vic. Essex Salutem: Ex parte dicti domini regis tibi præcipio, quòd Summoneas per bonos summonitores, omnes Archiepiscopos, Episcopos, Abbates, Priores, Comites, Barones, Milites, & eorum liberos tenentes, qui terr' aut tenementa habent infra metas forestæ domini Regis de Waltham in com' Essex, & de qualibet villa & villata infr. easdem metas, quatuor homines & propositum, & de quolibet burgo infra metas ejusdem forestæ duodecem probos & legales homines, & omnes alios qui coram Justiciariis placita forestæ ten' venire solent & debent, quòd sint apud Waltham die Lunæ prox' post festũ sancti Petri Apostoli proxim' futur', coram me præfat' Justic' Itinerante, vel meo in hac parte deputato, audituri & facturi ea quæ ad placita forestæ ibidem pertinent. Et ulterius tibi præcipio, quòd per totam ballivam tuam, viz. tam in burgis & aliis villis, quam in feriis, mercatis, & aliis locis publicis, publicè proclamari facias, Quòd omnes illi quicunque qui per Chartas dicti dom. Regis & anteceſſorũ seu progenitor' suor', aut alio modo aliquis libertates, francheſias, aut liberas Consuetud' forestæ infra dictã forestam habere clament, sint coram me præfat' Justiciar' aut meo in hac parte deputato, die & loco prædictis, ostensuri quas libertates habere clament. Et omnes attachiat' pro viridi & venatione infra forestam prædictam post ultim' placit' forestæ tent. ac earum pleg. & manucapt' qui habuerunt diem Per manucaptionẽ corã Justic' domini Regis Itinerãt, proxim. illic venient quòd adtunc sint ibi coram me præf. Justic' ad stand' rectò, & ad faciendum ea quæ secundùm legem forestæ facere debent: & quòd tu ipse sis ibidem cum ballivis tuis ad exequend' & certiorand' me super his & aliis negotia illa tangentibus: Et habeas ibi summonit' & hoc breve, Teste, &c.

The general Sessions of the forest proclaimed.

And

And it is to be understood, that when they do make out their writ of general Summons for to summon and command all manner of persons to appear there where the same is to be appointed by the said writ, in such maner and form as is before declared, they must by the order and course of the Law, of very necessity give unto these officers and others that are to appear there, a day of reasonable warning by the space of forty days at the least, to hold their Sessions in, in the same manner as the Justices in Eyre at large do make: and they shall hold pleas of Quo warranto, as the other Justices do. And this is the general Summons that the statute of Charta de Foresta doth speak of.

Forty days warning.

And there is also another kind of general Summons, which the Justices of the Forest shall cause to be made by directing of their warrant to the Chief Warden of the forest, which warrant is in the form as followeth.

* See after, in this chapter, in the 3. Division.

The writ to the chief warden.

Thomas Lovel nobilis ordinis Garterii miles, Justiciarius Itinerans omnium forestarum domini regis in Anglia, tam citra Trentam quam ultra, Johan. de Vere Com' Oxon. custod' forestæ dom. regis vel ejus locum tenent. in eadē, salut': Ex parte dicti domini regis vobis mando, firmitèr injungens, quòd venire facias coram me præfat' Justiciar' apud Waltham die Lunæ proximo post festum Sancti Petri Apostoli prox. futur' omnes forestarios, viridarios, regardatores, woodwardos, ac alios ministros ejusdem forestæ qui nunc sunt & qui post ultim. placit' forestæ prædict' tent. fuerunt & eorum quem'ibet, cum omnibus rotulis, scriptis, monumentis, & attachiamentis forestæ tam de viridi quam de venatione, quæ post ultim' placit' ill' emersa, & non determinat' extiterunt: facias regardatores forestæ qui sunt & qui post ultimum placitum prædict' tent' ibidem fuerunt, cum omnibus regardis suis per idem tempus factis & irrotulatis: faciasque insuper adtūc et ibidem

Rotula Regardatorum.

Rotula Agistatorum.

dem omnes agiſtatores ejuſdem foreſtæ qui nunc ſunt & qui poſt tempus prædictum fuerunt, & eorum quemlibet, cum omnibus attachiamentis ſuis & rotulis agiſtamentor', ad ſtand. inde rectè, & ad faciend. ea quæ eis & eorum cuilibet ſecundùm legem foreſtæ injungentur, aut quæ facere debent: facias etiam venire omnes illos qui clament habere aliquas libertates aut franchefias infra foreſtam prædictam, quòd ſint coram me aut locum meum tenente ad prædict' diem & locum oſtenſur' quomodo clamant habere libertates, franchefias, ſeu privilegia, & quo warranto: & quod vos ſitis adtunc & ibidem cum nominibus omnium prædict' miniſtrorum, & hoc breve nobis remittentes, Teſte &c.

The Juſtice of the foreſt may make a deputy by the Statute of 32. H. 8. c. 35.

It appeareth by this writ, that the authority of the Juſtices of the Foreſt doth differ from the authority of other Juſtices in Eyre; for the Juſtices of the Foreſt may make their deputy or lieutenant to execute their office and place, and ſo cannot other Juſtices in Eyre do: but that is by reaſon of the Statute of 32. of King H. 8. for before the making of that Statute it ſeemeth that the Juſtices of the Foreſt could not make a deputy or lieutenant to execute their place or office, foraſmuch as the ſame is a judicial place of authority.

3 What perſons ought to appear at the Juſtice-ſeat, before the Lord Juſtice of the Foreſt, by general Summons, and what not.

Whereas the words of the Statute of Charta de foreſta, Articulo ſecundo, are, Homines verò qui manẽt extra foreſt' non veniant de cætero cor. Juſtic' noſtris de foreſt' per communes Summonitiones, ni ſint implacitati vel plegii alicujus vel aliquor. qui attachiati ſunt propter foreſtam: Now it is to be ſeen, what perſons are compellable by this Statute to appear before the Juſtices

ſtices of the Foreſt by this general ſummons mentioned in this branch of the ſame Statute. It is to be underſtood, that before the making of this Statute of Charta de foreſta, the Law of the Foreſt was, that all men within the County, as well thoſe that did dwell out of the Foreſt, as alſo all thoſe that did dwell within the Foreſt, were bound to appear before the Juſtices of the Foreſt, by this general ſummons, when they did hold their Eyre or Seſſions of the Foreſt in that county: and all Earls, Barons, Knights, freeholders, and others, were bound to appear before the Juſtice of the foreſt, by this general ſummons, at their general Seſſion, before the making of this Statute, as it doth appear in Aſſiſa foreſtæ, fact' tempore, H. 2. c. 19. (in hæc verba) Comites, baron. milit. & liberi tenentes, & omnes homines de com. veniant ad ſummon. noſtri foreſt', ſicut ſe voluerint defendi, ne incidant in manum regis, ad placitand. placita de foreſtis ſuis, vel ad alia negotia faciend. in com. And alſo the ſame is affirmed and proved by the words of the Statute, viz. de cætero, which is, that from henceforth no man that doth dwell without the foreſt ſhall be compelled to come before the Juſtices of the foreſt by this general ſummons of the foreſt: by which words (from henceforth) is plainly noted and ſhewed unto us, that before the making of this Statute all perſons that did dwell without the foreſt, within the ſame County, were then bound to appear before the Juſtices of the foreſt, by the general ſummons, which was a very great veration and trouble to all perſons which did dwell without the bounds of the foreſt, to give their attendance there during all the time of the Seſſions.

And it doth ſeem that one principal cauſe of the making of this Law was, that foraſmuch as King H. 2. grandfather to King E. 1. had afforeſted the lands and woods of divers perſons which were not the Kings own demeſne

The reaſon of the making of this Law.

demesne woods: (as it doth appear by the first article of this stat.) and all those are there appointed to be disafforested again, & so to be put clean out of the forest: now this second branch or article is as it were an especial prohibition chiefly for them that then were dwellers in those places which some times were within the forest, and yet by this stat. put out of the forest, that they being out of the bounds of the forest should not be compelled to come before the Justices of the forest at their general Sessions by this general summons as they were wont to do, unless that they be pledges for some other person that is an offender: or that they be there impleaded for any plea of the forest: or that they be attached by any minister of the forest to appear before the Justices for the same offence of the forest.

See before ca. 16. divis. 9.

And it is to be understood that this branch of the stat. is divided into two parts (that is to say) concerning those that do dwell without the Forest, and those that do dwell within the Forest: for in some cases those that do dwell out of the Forest ought to appear before the Just. of the Forest by reason of the general summons, notwithstanding the words of the stat. aforesaid: and again in some cases, they that do dwell within the Forest shall not be compelled to appear before the Justices of the Forest by the general Summons, notwithstanding the words of the Statute aforesaid: and in some cases they shall appear by other process than by general or common summons. And as concerning the first division, which is of those that do dwell out of the Forest, and yet they are compellable to come before the Justices of the Forest, by this general or common summons, notwithstanding the words of the statute aforesaid: it is to be understood that if any person which doth dwell out of the Forest, hath any liberty or franchise within the Forest, for the which he is to put in a Claim before the Justices of the Forest:

Apparance of him that dwells out of the Forest.

then

then ſuch a ſoreiner or dweller out of the Foreſt muſt of neceſſity appear before the Juſtices of the Foreſt, by this general or common ſummons, and there to preſer his claim for the ſame liberty or priviledge at the firſt day of the Seſſions of the Foreſt (notwithſtanding the words of the ſaid ſtatute) or otherwiſe his Claim ſhall be ſeiſed into the hands of the King for non Claimer of the ſame. And in like manner it is, if one that doth dwell out of the foreſt have a profit appzender out of any land within the Foreſt, or any office within the Foreſt, or any other priviledge or liberty: then he muſt of neceſſity appear before the Juſtices of the Foreſt, at the firſt day of the Seſſions, and there put in his Claim for the ſame; and ſo he is bound to take notice of this common or general ſummons, and thereby to appear, although that he doth dwell out of the Foreſt (notwithſtanding the words of the Statute aforeſaid) or elſe the ſame office, priviledge, or liberty, ſhall be ſeiſed into the hands of the King for non Claimer of the ſame. So it is if a man have two houſes, the one of them within the Foreſt, and the other of them is out of the Foreſt, and the owner of them is reſiant and dwelling ſometimes at the one, and ſometimes at the other: ſo that he is peradventure reſiant and dwelling out of the Foreſt at the time of the ſummons of the Seſſions of the Foreſt: yet notwithſtanding ſuch an owner ought to appear before the Juſtices of the Foreſt by this common ſummons (notwithſtanding the words of the ſtatute aforeſaid) as it appeareth by M. Heſket, in his learned reading of the Laws of the Foreſt.

Non claimer, is cauſe of ſeiſure.

M. Hesket, in his reading.

And now, as the ſecond diviſion of the ſaid Statute, concerning thoſe that do dwell within the foreſt, and yet they ſhall not be compelled to appear before the Juſtices of the Foreſt upon common ſummons aforeſaid: it is to be underſtood, that all manner of perſons dwelling within the foreſt, and being under the age of 12. years: al-

Some that dwell in the foreſt not compellable to appear on the general Summons.

Vide the Stat. of Marlebridge, an. 52.H.3.ca. 26.

though that they be inheritors of lands within the forest, yet they are not compelled to appear before the Lord chief Justice in Eyre of the forest, at the general Sessions, by reason of this common summons aforesaid.

And in like manner, all manner of persons that are dwelling within the forest, being either lame, sickly, or else blind: they are not to be forced to appear before the Lord chief Justice in Eyre of the forest, by this common summons aforesaid.

All manner of persons that are of the age of 70. years and upwards, they are not to be forced to appear before the Lord chief Justice in Eyre of the forest by this general summons, although that they do dwell within forest (notwithstanding the words of the Statute aforesaid)

West. 2. 13. E. 1. ca. 38.

for they are prohibited for by the Statute of Westminst. 2. cap. 38.

If any man dwelling within the forest is imployed in the service of the King in some other place, so that he could not by reason thereof appear before the Lord chief Justice in Eyre of the forest, he may have his writ called Warrantia diei, to excuse his apparance before the Justice of the forest.

If any Archbishop or Bishop have lands within the forest: the said Archbishop or Bishop himself in his own proper person shall not be forced to appear before the Lord Justice in Eyre by reason of the general or common summons: and yet note, the words of general summons are these, Præcipio quod Summoneas per bonos Summonitor. omnes Archiepiscopos, Episcopos, Abbates, Priores, Comites, Barones, Milites & eorum liberos tenentes qui terr. aut tenement. habent infra metas foresti. dom. regis, &c. But all spirituall persons are exempted to be compelled to be put in Juries by the Statute of Marlebridge, ca. 24. But yet their free tenants shall appear by reason of this general summons, if they do

Hesket, f. 8.

An. 52. H. 3. cap. 24.

dwell

dwell within the foreſt, or elſe they ſhall be amerced.

Alſo all Earls and Barons which have lands within the foreſt, and do dwell out of the Foreſt, they themſelves ſhall not be compelled to be before the Lord Juſtice in Eyre of the Foreſt, by this general Summons: but it ſhall ſuffice if their free tenants appear there, themſelves, & eorum liberos tenentes, as it doth appear by Maſter Hesket, in his reading, fol. 8. but Knights, and all other free tenants which do dwell within the foreſt ſhall be forced to appear before the Lord Juſtice in Eyre of the Foreſt, by this common Summons, for they ſhall be put in Enqueſts there: ſo ſhall not Earls, Barons, nor other Lords of high eſtate, for they ſhall not be compelled to be ſworn upon inqueſts themſelves, for any manner of triall there: And the like Law is for women that are franke tenants within the Foreſt, for they themſelves ſhall not be compelled to be put upon any inqueſts.

Trehetne, in his reading, pag. 8.

M. Hesket, in his reading, f. 8.

Farthermore, the ſervants of any man dwelling within the Foreſt ſhall not be compelled to appear before the Juſtices of the Foreſt by this general ſummons mentioned in this ſtatute: for it ſhall be ſufficient for the Maſter of ſuch a ſervant himſelf to appear, and not his ſervant: quia illi ſunt ſub manu paſtu alterius coram Juſticiar. noſtris de foreſta.

But all Archbiſhops, Biſhops, Abbots, Priors, Earls, and Barons, and all other of what eſtate or degree ſoever they be, which do claim any liberties, freedoms, priviledges, or other free cuſtoms within the Foreſt, they muſt appear before the Juſtice of the Foreſt by this general ſummons, to make their claims for the ſame, or otherwiſe the ſame liberties, freedoms, and cuſtoms ſhall be ſeiſed into the hands of the King for non Claimer of the ſame: but they need not to appear in proper perſon, but by their atturney.

Vide ante, fol. 76. Assisa Lanc.

All Knights and those that be Freeholders which do dwell within the bounds of the Forest; and also all those that be frank-tenants of any lands within the Forest, although they be spiritual persons and dwell out of the Forest, yet they shall be compelled to appear before the just. of the Forest at the general Sessions of the Forest, by this general summons, notwithstanding the words of the Statute are, qui manent extra forestam: for although that they do dwell out of the Forest, yet because that they have lands within the Forest, the Law doth accompt them resiant where their land is in that respect: for otherwise the Sessions could not be holden, nor justice done in the trial of liberties and other things there concerning the Forest.

4 Of apparance in proper person, by Attorney, by Gardien, by Prochein amy: of apparance of a person bailed or mainprised: difference between bail and mainprise.

What persons shall appear in proper person.

IT is to be understood, that all manner of persons that do dwell either within the Forest, or out of the Forest, if they are to appear at the just. seat or general Sessions by any such summons in respect of their lands that they have within Forest to serve there upon inquests: then those persons are to appear in proper person only, and not otherwise.

Those that do make any claim may appear by Attorney.

And all manner of persons which do appear before the just. of the forest, to make any claim there for any manner of liberties or priviledges: those persons may appear there either in proper person, or by their Atturney, whether they will, at their election. I do find by the Assises and Iters of the Forest of Lancaster and Pickring, that men that are impleaded for trespasses which are done in the

the Fozeſts may make their apparance in four fozts; whi h are as followeth:

Sometimes { In proper perſon. / By Attorney. / By Gardein. / By Prochein amy.

It ſeemeth by M. Hesket, in his reading of the Laws of the Fozeſt, that upon any Bill, Pzeſentment, oz indictment foz treſpaſſes done in the fozeſt, the deſendant may appear by an Attozney, oz any pzoper perſon, at his election, to anſwer the ſame treſpaſſe: but I think that he doth mean by that apparance by an Attozney, to be at the Court of Attachments, oz at the Swanimote Court, and not at the Juſtice-ſeat beſoze the Lozd chief Juſtice in Eyze: foz as I take it, every offender that is bound to appear there to anſwer any treſpaſſe of the fozeſt, muſt appear in pzoper perſon, and not by any Attozney: foz although the ſame be but a treſpaſſe, yet in this treſpaſs the King is a party: and it is holden foz Law, in 20. E. 3. fol. that in treſpaſſe where the King is a party, the deſendant muſt appear in pzoper perſon, and not by Attozney: and ſo the difference is there taken. And alſo all oſſenders that are bound to appear at the Juſtice-ſeat, which habe been pzeſented at the Swanimote Court beſoze (as they ought to be) they do ſtand conbicted in Law, ſo that they are then paſt anſwering of their offence in that place. But if any treſpaſſer in the fozeſt after the Court of Swanimote was holden, and beſoze the Juſtice-ſeat be kept, habe done a treſpaſſe in the Fozeſt in Wert oz Veniſon, and the ſame being pzeſented at the Juſtice-ſeat beſoze the Lozd Juſtice in Eyze of the Foreſt, and the ſame offender hearing of it doth repair to the ſame Juſtice-ſeat, and there doth appear in pzoper

Any perſon that is to make any claim may the firſt day of the Eire, either make it in perſon, or by Attorney, F. N. B. 26. g. And he that appears upon a preſentment or indictment taken before the Juſtices in Eire, and traverſeth the indictment may aſteno, appear by Attorney, Co. 4. Inſt. 297. 20. E. 3.

In proper person.

person gratis, he may then traverse the same presentment if he will: for as yet this shall not be said to be præsentatum per Forestarios, & convict' per viridarios, unlesse the same were done at a Swanimote, according to the Ordinance of the Forest, made in Anno 34. Ed. 1. But in this case the defendant may appear by an Attorney if he will: and so by his Attorney he may be allowed his traberse to the presentment against him.

By an Attorney.

Per Gardein.

If an infant be impleaded for any trespasse of the Forest, before the Lord justice in Eire of the Forest, the same infant may appear in proper person at the same justice seat, and there declare unto the Court that he is an infant within age, and pray the said Lord justice in Eire that J. P. may be allowed his Gardein to plead for him in this case, which the Court will allow him so to do: or else, in this case, if the infant do not appear himself in proper person, but doth send the said J. P. which declareth unto the Court that Will. Blunt which is here impleaded is an infant within age, prayeth that he may be received as his Gardein to plead for him, then the Court will admit him thereunto.

Per procheine amy.

And in like manner it is where an infant having chosen his Gardein, which Gardein is sick, or otherwise will not or cannot appear at the Justice seat before the Lord justice in Eire of the Forest, to answer for such an infant that is there impleaded before the Lord justice in Eire of the Forest; then if the said infant do appear before the Lord justice at the said Court, and there prayeth that J. S. may be received for him as his Procheine amy to plead for him, the Court will receive him thereunto.

But it seemeth that all those that are mainprised or bailed until the general Sessions of the Forest, they must of necessity appear in proper person before the Lord Justice in Eire of the Forest, and not by Attorney, nor

nor by Gardein, nor by Prochein amy, by reaſon of the ſaid general Summons.

If a man attached for a treſpaſs of the Foreſt do find pledges to appear at the next general Seſſions or Eire of the Foreſt, there as well the Pledges as the Defendant ought to appear: Quia principales debitores & plegii ſunt equales ad debitum Regis, ſed aliter de aliis debitoribus: and if the Pledges for ſuch a treſpaſſe do appear by common Summons, but not the defendant himſelf, then the Pledges ſhall be impriſoned for that default of the defendant, until that they have made fine for that default of the defendant: but otherwiſe it is, if the defendant himſelf do appear and be ready in the Court before the Lord Juſtice in Eire, to receive his judgment, and to pay his fine. But if ſuch pledges do make default, in that caſe the pledges ſhall be amerced, but not fined. But if the pledges, that be pledges for him, be bound in a certain ſum of money for the apparance of the defendant, then if the defendant do not appear himſelf at the general Eire of the Foreſt by the common Summons, although that his pledges do appear there, and do alſo alledge ſome reaſonable excuſe for him; yet notwithſtanding thoſe pledges have forfeited the ſum that they were ſo bound in, by reaſon of his default. M. Hesket, f. 11.

The difference between a fine and amercement.

But the King in that caſe ſhall not have execution againſt them of that ſum preſently, but only a Scire facias againſt thoſe pledges to anſwer the King, Si rien poient dire, why the King ſhould not have execution of the ſaid ſum againſt them: and then if they have any matter to plead to ſave the default of the defendant, they may plead the ſame, or any other matter that they will, in Bar of it, although that the default do appear by matter of Record: for in every caſe upon a Scire facias, the defendant may plead any ſpecial matter in avoidance of the

ſame, as he might do upon any other original proceſs.

Bail and mainprise. And note, that there is a great diverſity between Bail and Mainprize: for he that is mainprized is always ſaid to be at large, and to go at his own liberty out of ward, after that he is let to mainprize, until the day of his apparance, by reaſon of the ſaid common Summons, or otherwiſe. But otherwiſe it is where a man is let to bail to four or two men by the Lord Juſtice in Eire of the Foreſt, until a certain day, for there he is always accounted by the Law to be in their ward and cuſtody for the time, and they may if they will keep him in ward or in priſon all that time, or otherwiſe at their will: ſo that he that is ſo bailed ſhall not be ſaid by the Law to be at large, or at his own liberty. And this manner of bail is, when any man is attainted of a treſpaſſe in the Foreſt, and is taken in execution of the ſame, then the Lord Juſtice in Eire of the Foreſt may let him to bail as is aforeſaid: and the form of the entry of that bail is, J.S. traditur in ballivum G.S. corpus pro corpore uſq; ad &c. and in this caſe mainprize doth not lye: but he that is either bailed or mainprized, he muſt be in proper perſon: and the Lord Juſtice in Eire of the Foreſt himſelf is only to let an offender in the Foreſt attainted to bail, as is aforeſaid, and not the Sheriff, nor Gaoler, nor any other Officer of the Foreſt, but the chief Warden of the Foreſt may let a treſpaſſer of the Foreſt to mainprize by the words of the Statute of An. 1.E.3.cap.8. But he cannot deliver a man attainted of a treſpaſſe in the foreſt to bail, as is aforeſaid. Note the difference: Et nota, que ceſt parol mainprize eſt intend, quaſi manu captus & liberatus ad largum uſque ad diem, & ceſt parol baile eſt intend, quaſi tradit' in ballivum ad ſalvum cuſtodiend. ſemper in eorum cuſtodia quibus traditur uſque ad diem. Quod nota.

1.E.3.cap.8.

Heskes, f.11.

5. The

5. The manner of holding the High Court of the Lord Chief Juſtice in Eyre of the Foreſts, commonly called the Juſtice Seat of the Foreſt.

Foraſmuch as the Court of Attachments, called the Fourty-day-Court, or Woodmote, and alſo the Court of Swanimote, have already been ſpoken of briefly, and alſo the proceeding in thoſe two Courts againſt ſuch as are offenders in the Foreſt in Vert or Veniſon: And for that it appeareth that by the Laws of the Foreſt, all the proceedings of thoſe Courts for the greateſt offences done in the Foreſt are as nothing, until ſuch time as they are preſented to the Lord Juſtice in Eire of the Foreſt, at the Juſtice ſeat, becauſe that although the offences and treſpaſſes of offenders be preſented in the ſaid Court of Attachments, and that afterwards upon the ſame preſentments the offenders be indicted at the Court of Swanimote, according to the Statute of Anno 1. E3. cap. 8. and according to the Statute called Ordinatio Foreſtæ, yet cannot either of the ſaid Courts of Attachments or Swanimote give any judgment of thoſe offences, or aſſeſs any fines for the ſame; for that doth appertain only unto the Lord Juſtice in Eire of the Foreſt, to do at his will and pleaſure at the ſaid Court of Juſtice ſeat: And therefore all thoſe Rolls of all ſuch offences as have paſſed the Court of Swanimote, and the Court of Attachments, are to be ſealed up with the Seals of the ſaid Verderers; and they are to keep the ſame Rolls until the Juſtice ſeat; and then they are to preſent the ſame unto the Lord Juſtice in Eire of the Foreſt.

This Court of the Juſtice ſeat cannot be kept oftener than every third year, Co. 4. Inſt 291. Anciently this great Officer was created by Writ, as other Juſtices in Eire were; but now by the Stat. of 27 H 8. c. 24. he is to be created by Letters Patents, Co. 4. Inſt. 291. This Chief Juſtice may *per* Stat. 32. H. 8. c. 35. make a Deputy; yet all the Writs of Summons both ancient and late, are, *Coram Juſt. itinerant. aut ejus Deputat.* Co. 4. Inſt. 291.

And if any Foreſter, Verderer, or other Miniſter of the Foreſt, that hath the cuſtody of any Rolls of the Foreſt

Punishment of Foresters, Verderers, or other ministers of the Forest, not bringing in the rolls of the forest at the Justice seat of the forest.

Forest, (at such time as the Justice of the Forest, or his Deputy, shall at the Justice seat hold the pleas of the Forest) their Heirs, Executors, or Assigns, or the Tenants of their lands, in what Shire soever the lands be, do not appear to bring in the Rolls, Presentments, and Indictments of the Forest, the first day of the same Justice seat; That then there shall go forth a Precept to the Sheriff of the County where such lands do lye, commanding him, Quòd expulsis uxore & liberis, seisiri faciat omnes terras & tenementa quæ fuerunt ipsius in balliva sua, ita quòd de valore eorund' per annum respondeat prefat' Justic', &c. nisi tenentes terræ & tenement' ipsius priùs venerint ad rotulos suos & alia memoranda prædicta dictum Iter tangentia reddenda.

Rolls lost.

And if it happen that such rolls of the forest, or memoranda be lost, then by the Assises of the forest the said officers, or their heirs, executors, and tenants, may require the Justices of the forest, that they may make their fine with the King for the same, and then the form of the same entry is thus, Et admittuntur per finem dimid. Marcæ, &c.

Rolls burnt by enemies.

And if it should happen that such rolls or indictments of the Forest be burnt or destroyed by the Enemies of the Realm, yet is not this any excuse, by the Assises of the Forest, although the same were indeed a very good excuse by the Common Laws of this Realm. Quia Judicia Forest. & assisar. ejusd. seorsum ab aliis Regni judiciis secernunt. & solius Regis arbitrio, vel cujusd. familiar. ad hoc specialiter deputati subjiciunt. And therefore in this case the said Officer shall make his fine for the same, or else his land shall be seised. And ꝑ like law is of Agisters, if they do fail of their rolls and accounts. v. supra 83.

Libro Rubro Scaccarii.

Amercement of the Verderers for not appearing.

And furthermore, it is to be understood, That if the Verderers at the Justice seat do make default, then they shall be amerced for the same default and distrained by their lands, to bring in their rolls, indictments, and

and other monuments that do concern the foreſt: Note, that, of neceſſity, before any Juſtice Seat of the Foreſt can be holden, the Regarders of the Foreſt muſt make their regard: And this making of the Regard muſt be done by the Kings Writ (which ſee before, cap. 21. Diviſ. 3.) And therefore always before the Lord Juſtice in Eyre of the Foreſt doth hold his general Seſſions or Juſtice Seat for the Foreſt, he doth cauſe the ſaid Writ to be made and ſent to the Sheriff of the ſame Shire where the Foreſt is in which the Juſtice Seat ſhall be kept, together with a briefe abſtract of all ſuch matters as the Regarders of the Foreſt ſhall inquire of: And when the ſaid Regarders have made their range, and affirmed at the Swanimote or Court of Attachments all ſuch matters as they have found in their ſurvey, they are alſo to preſent the ſame under their hands and ſeals unto the Lord Juſtice in Eyre of the Foreſt, as you may more fully ſee before, cap. 21. Diviſ. 3. & cap. 24. Diviſ. 2. See c. 21. diviſ. 3

And it is further to be noted, that before the Lord Juſtice in Eire of the Foreſt do keep this High Court of Juſtice ſeat, when he hath received the Kings Commiſſion for that purpoſe, then the Lord Juſtice in Eire doth make out his Warrant or Precept to the Sheriff of the ſame Shire within the which the Foreſt is where the Juſtice ſeat ſhall be holden, (the tenor of which Writ is ſhewed before, cap. 2. 4. diviſ. 2.) thereby commanding the ſame Sheriff to ſummon by ſufficient Summons all the Archbiſhops, Biſhops, Earls, Barons, and Knights, and their free Tenants which have any lands or tenements within the bounds of the foreſt of our Sovereign Lord the King, called the Foreſt of Windſor, and alſo of every town and village within the bounds of the ſame Foreſt, to ſummon four men and the Reeve, and alſo to ſummon every ancient Borough within the bounds of

Precept to the Sheriff, of general Summons.

of the same Forest twelve good and lawful men, and also all other freeholders that ought to appear before the Justice in Eire of the Forest, and that they shall be before the same Lord Justice in Eire at Windsor, on Munday next after the feast of S. Peter the Apostle (or at such day as the Lord Justice in Eire shall appoint in the same Warrant, for to sit and hold pleas of the forest:) and furthermore, to command the same Sheriff, that throughout all the whole liberty of the same Shire, as well in all the ancient Boroughs and other Towns, as also in all Fairs and Markets, and other publick places, that he shall openly proclaim, or cause to be proclaimed, that all manner of persons whatsoever they be, which claim to have by the Charter or Charters of our Sovereign Lord the King, or of any of his Ancestors or Progenitors, or by any other ways or means, any liberties or franchises or free Customs of the Forest, within the said Forest of Windsor, that they shall be before the Lord Justice in Eire or his Deputy, at the day and place above mentioned in the same Warrant, to shew what liberties they do claim to have in the same Forest; And that all manner of persons that are attached for Vert and Venison within the Forest aforesaid, after the last plea of the Forest holden before the Lord Justice in Eire, and also that all pledges and Manucaptors which have day by their Manucaption before the Justice of the Forest of our Sovereigne Lord the King at his next coming into the Forest to hold his Justice seat, that they be before the said Lord Justice in Eire at such a day as is mentioned in the said Warrant to the same Sheriff, ready to fulfil and do those things which by the Laws of the Forest they ought: And that the same Sheriff with his Bayliffs be there also to certifie the said Lord Justice in Eire of the premises, and also to execute the Office of a Sheriff in these and such like matters concerning the same.

The Sessions proclaimed.

Sheriffs attendance.

And

And it is to be noted, that the Lord Justice in Eire must alwaies by his precept, as aforesaid, give day by ꝑ same precept of Summons, so that all men that are to be summoned by it may have fortie daies warning at the least, of the same Justice seat by the Sheriffs Proclamation, as hath been beforeshewed. And when the Lord Justice in Eire is come to the place appointed, according to the Proclamation, and that he is set in his judicial seat, and those that are in commission with him, then after the Commission is read, and the Officers of the forest called, then the freeholders of the same forest shall be called also, and all others that were warned to appear there at ꝑ day; & then out of those freeholders & others, there is chosen a most substantial Jurie of xxiiii. or xx. or xviii. of the discreetest men: & they shall be sworn that they shall truly inquire, & true presentment make, of all such matters as shall be given them in charge: and then, to the intent that the K. most excellent Majestie may the better be certified what offences have been done in the forest in any degree since the last seat of the Justice, & also how those offenders have been prosecuted, laboured, or punished by the officers of ꝑ forest, whom the K. doth trust in ꝑ behalf; & that the K. may likewise know what Officers of the Forest have well & dutifully discharged their office as they ought to do; the Lord Justice in Eire, or some man learned in the Laws of the Forest, by his appointment, shall give unto the same Jury a charge: which charge in effect doth comprehend briefly the whole scope of the Laws of the Forest, and is as followeth.

Forty days warning.

Commission read.

Officers, Freeholders, &c. called.

Jury sworn.

The Charge of the Lord Justice in Eire of the Forest that he doth give at the Justice seat.

FIrst, ye shall inquire of all attachments made since the last Sessions, as well of Vert as of Venison: and as

as well in the demesne woods of our Sobereign Lord the King, as in any other place within the bounds of the Forest, and by whom such attachments were made, and how they were made, and whether there hath been any hunting within the bounds aforesaid: and if any hath been, then by what person it hath so been, and who hath been consenting or agreeing to the same, that is to say, the Foresters or any other: and what they bebe been that habe hunted with warrant, and who without, and how often, when and where the same was.

2 Ye shall also inquire, whether there hath been any attachment made by night, and who they were that habe been so attached, and by whom they were attached.

3 In like manner you shall inquire, what attachments habe been made in Fence time, as well of those persons that habe offended as of others suspected: and of all others found in the Forest searching and going after a suspected manner.

4 You shall further inquire, if there habe been any assarts, wastes, or purpresures newly made since the last Sessions or before, and not presented, other then such as habe been made by grants or license of the Kings Majesty, or any of his progenitors: and within whose fee the same hath been, or is so made, that is to say, in the Kings demesne lands, or in the lands of any other: and who hath so made them or any of them: and who doth now hold the same: and how they be inclosed: and how much the same doth contain by the number of Acres.

5 Item, you shall inquire, if there be any person or persons, that hath or bebe inclosed any quantity of ground whatsoever it be, adjoyning or bordering upon the Forest, and thereby inlargeth his or their own ground, in setting out of their bedge or bedges, ditch or ditches, and so straitneth the Kings Forest, ye shall present

ſent his or their names, and the quantity of the ground ſo inlarged.

6 Ye ſhall farther inquire, if any perſon or perſons hath or habe raiſed up or taken away any marke or bound of the Foreſt: if any hath ſo done, ye ſhall preſent his or their name or names, and the day and time when it was done.

7 Ye ſhall farther inquire of the bounds and limits of all Bailiwicks within the Foreſt, and how and after what manner they be bounded: and how every of the ſaid Bailiffs and Foreſters habe uſed to keep and walk: and what they and every of them do claim to appertain to his or their office or offices: and what they do take by reaſon thereof, and by what warrant the ſame is done.

8 Item, if any perſon or perſons hath or habe made any Mine Delph of Coal, Stone, Clay, Marle, Turfe, Iron, or any other Mine, you ſhall preſent his or their name or names, and the place where the ſame is ſo done.

9 Alſo you ſhall inquire whether any Tanner or White-tawer doth dwell within the precinct of the Foreſt, and do uſe their faculties there, yea or no.

10 If any perſon or perſons habe newly builded or made any Mine within the Foreſt, ſince the laſt Seſſions, or before, and not preſented, you ſhall preſent his or their name or names.

11 Item, if any Church, Town or Houſe, ſince the laſt Seſſions or afore, and not preſented, hath been erected and builded within the bounds of the Foreſt: by whom the ſame hath been ſo builded, and how long it is ſince: and how many beaſts be paſtured and fed in the Foreſt, by reaſon of the ſame, to the prejudice, hurt and ouercharging of the ſaid Foreſt.

12 Item, if any man hath builded any Swine-houſe,

Nea-

Meat-house, or Sheep-house, or any other house or inclosure within the bounds of the Forest, to the noisance of the Forest: ye shall inquire by whom it was done, and how much the ground is, and what it containeth, and how much pasture by your estimation for the Deer of the King is thereby surcharged and impaired by the beasts which go in or out, to or from the said house or houses.

See the form of their Oath, at the end of this charge.

13 Item, if all the inhabitants within the Forest, as well Clerks holding lay Fee, as others, being of the age of 22. years and above, be sworn to be true to the Forest or not, and of their apparance and defaults made here at this present time.

14 Item, if any of the Foresters, Keepers, or other Officers, which have walks, and to do in the said Forest by reason of their office, be yet unsworn: and if any such be, you shall do us to weet what is his name or names, and whether he or they be present or absent.

15. Item, you shall inquire what Parks be within the limits and bounds of the said Forest or nèr unto the same, and how they be inclosed, and what saltaries and leaps they have in hurt of the said Forest: or what common trespassers be in any of the Kings Parks within this Shire, as with Bows and Arrows, or any other Engine: and whether any ground be tilled within the Kings Parks without license, yea or no: if there be, then by whom the same is tilled.

16 Item, you shall inquire what waived goods and straies have been within the said Forest since the last Session, or before, not presented, and how the King is answered for them: or what other person or persons claimeth or taketh them, and by what title or warrant the same is done.

17. Item, you shall inquire if any person or persons hath or have taken any Swarm of Bees, Hony or Wax within

within the said Forest: how many and how much, and the value, and who ought of right to have them.

18 Item, you shall inquire who maketh or taketh the profit of Turbary, if any be within the said Forest, and what ground it is, and whether there is or ought to be answered any rent for the same or no: and to what detriment or hurt of the Forest the same is.

19 Also, if there hath been any River, Haven or Creek newly made, whereby Wood, Timber or Venison hath been conveied away by Boat, Barge or Ship: of all such offenders, and their aiders and consenters, you shall do us to wit.

20 Item, you shall inquire if any officer of the forest hath made any Scot-ales, gathered any sheaves of corn, or done any extortion or oppression by colour of their office, you shall present their names, & the same offence.

21 Also, if there hath any person used to come into the Forest in Fence time to seek Sheep, Swine or other Cattel, being not sworn to the Assise of Forest, ye shall present his name.

22 Item, you shall inquire whether the Steward hath kept the Courts of Swanimote three times in the year according to the Laws of the Forest, and taken his presentments, and caused them to be affirmed by the Verdict of xii. indifferent men, and also to be insealed by the Verderers and other Officers, according to the said Laws or not. And whether the xl. day Court hath been kept or no, according to the Statute.

23 Item, whether the Keeper, Bailiff or Steward, have taken fines or amercements of the trespassers, or of those that were indicted or suspected for bert or benison, and if they did, of whom, how much, and what it was: and whether they have caused any person to be falsly indicted, how, and after what manner it was done.

24 Also, whether the Forresters, Verderers, Regar-

ders and Agisters, or others, have concealed any trespassers indicted or suspected, or made any attachments for their own lucre; or for favour, or for the cause aforesaid, have concealed purprestures, or any other thing pertaining to their office: and whether they have appropriated any thing to themselves which should appertain to the Kings Majestie, yea or no.

25 Item, ye shall inquire, if any Forresters or fer, or other officers, have taken any manner of fine, or reward, or chiminage, or passage, other then to his Bailiwick hath appertained: or which by colour of their office make any collections which are prohibited by the great Charter of the Forest, you shall present the same.

26 Also ye shall inquire, if any Forester or Forresters hath or have any person or persons which do accustomably resort unto them and haunt the Forest: and what the said person or persons do take and receive of the Forresters: and whether the said persons be suspected for any trespass or offence done or committed within the said forest: and if any such be, ye shall present his and their name and names.

27 Item, you shall inquire, how the Forresters do behave themselves in their several Bailiwicks & offices: & who are profitable to the Kings Majesty, and who not.

Item, Inquiratur, si Forestarius sit utilis domino Regi, & si non sit, de qua causa; Et si aliquid dent pro Ballivis suis, & cui, Ita quòd dominus Rex perdit in aliquo.

Item, Inquiratur de Forestariis amotis per Senescallum, vel per viridarium, ob quam causam, & qui sunt illi.

And whether there be in any of the said Bailiwicks any more forresters then there ought to be, & were wont to be, or do suffice and are necessary or needful for the safe keeping of ꝑ said Bailiwick: and whether they or any of them do surcharge their said Bailiwick by undue, or too often lodging of any person or persons: and which

which have had their horses there by the space of three nights and three daies, in other mens houses within their Bailiwicks or without, by reason of the said Bailiwick or Office: and which of the said Foresters have any lewd, hurtful, noisom or walking servant under them, to the charge or burthen of the Countrey: and which of them have made or levied any new custom or innovation concerning the Forest, to the damage of the Kings Majestie, and the trouble and burthen of the Countrey, &c.

28 You shall farther diligently inquire of all Bailiffs which be Foresters of fee, what warrant or specialty they have to hold and enjoy their said Bailiwicks: and which of them do give or render to our Sovereign Lord the Kings Majestie any yearly farm or annuitie for their said Bailiwicks, and how much they render for the same, and who do not, and what of right they or any of them ought to have and take of the said Forest to pay the said farm or annuitie: and by what meets and bounds they do and of right ought to hold their said Bailiwicks: and what demesne lands the King hath in every of the said Bailiwicks: and by what meets and bounds they be inbroned and set about with, &c.

29 Item, You shall inquire if any Forester of fee, or any other hath taken any reward of any Forester, that he ought to be put, deemed and taken within the liberty of the Forest, and after the receit of such reward, doth remove and displace the said Forester, and put a new in his place, for a new reward, to the great detriment and hurt of the Forest and grief of the Country.

30 If any person or persons, within the limits and bounds of the Forest, or without, to the hurt or prejudice of the Forest, have newly inclosed his liberal ground, Woods or Warren, or hath afforested any Wood of his

own without warrant of the Kings Majesty, you shall do us to weet of his name.

31 Item, you shall inquire whether any Deer habe been found newly dead, or otherwise wounded in such sort that the same cannot recober his hurt: and so found and taken by the Forresters, whether the flesh & bodies of such dead or hurt Deer hath been given and bestowed to the Lazer-house or Spitel-house next adjoyning, if any such there be; & if there be no such Lazer-house neer adjoyning, then whether the flesh & bones of such Deer aforesaid hath been bestowed, given and imparted among the poor people next inhabiting the forest: and if they habe been so well bestowed, then whether the Werderers or Country can testifie the same, yea or no, &c.

Vid supra, fol. 9. Assisa & consuetud. Forestæ, 6. E. 1.

32 Also, of all such Deer as hath been found and taken, as last before, whether the head and skin of the same habe been delibered to the freemen of the next Town adjoyning, &c.

33 Item, if any arrow or arrows hath been found within the forest, whether due presentment hath been made to the Werderers thereof, to the intent that the said Werderer in his Roll might enter the same, &c.

34 Item, if there be any Grey-hounds found running within the said forest, to the disturbance of the Kings Game, whether the same hath been presented in the presentments of the Werderers, to the intent that the same should be sent to the King, or to the chief Justice of the forest.

35 Item, you shall inquire, if all the dogs which be within the bounds of the forest, and ought to be lawed, be well and orderly lawed, and made profitable for the said forest, yea or no.

36 Item, if any man in time of Harbest habe taken in any Mastibe or great dog within the said forest, &c. to the hurt of the deer, or not.

37 Also

37 Also if any person or persons to whom the Kings Majestie or any of his progenitors, hath of late or old time granted liberty of free chasing within the Forest, if they or any of them by means and colour thereof have done any prejudice to the Kings Majestie in the said Forest, yea or no.

38 Also if the Kings Majestie or any of his progenitors hath granted liberty to hunt Wermine or Chase, that is to say, Foxes, Marterns, Wild-Cats, Pole-Cats and Squirils, within the said Forest, whether they or any of them by colour thereof hath killed any of the Kings Deer, yea or no.

39 Item, if any person have at any time seen any trespasser in the forest take any deer there, and hath not levied hue and cry to take him, ye shall present his name, &c.

40 Item, you shall inquire what persons there be within the bounds of the Forest, or without, that doth keep any dogs that will run and kill the deer, or kill Hares or any other beasts of Chase: or doth keep any manner of engine to take the said deer or other beasts, or who doth by any manner of engine take a deer or such beasts: and who are receivers, aiding, and consenting to the same, you shall present the same.

41 Item, whether any deer were or hath been taken: and by what manner of persons the same hath been so taken: and whether it were by warrant, or without warrant.

42 Item, you shall inquire, if any have been offenders in warrens of fish-pools within the liberties of the Forest.

43 Ye shall moreover inquire, what person or persons within the bounds and limits of the Forest hath any Bows, Shafts, Hounds, or any other engines, to the end to prejudice the Kings Majestie of his beasts of Chase, and who is accustomed to enter into the said Forest with bow and shafts, you shall present the same.

44 Item, you shall inquire whether any person (to whom the Kings Majesty or any other person by reason of his office hath given any deer) hath taken any other kind or more deer then hath been so given him: and what Foresters, Officers or other persons, have been aiding and assisting to the same: and whether the same were taken without sight of the Foresters and Verderers, yea or no: also ye shall inquire who hath taken any kind of Hawks, Pheasants, Partridge or other fowl of Warren within the said Forest, contrary to the Laws of the same.

45 Item, ye shall inquire, if there be any man that hath hunted the Kings deer within iii. miles about the Forest, at any time within xl. daies next before the Kings hunting, or xl. daies next after it was done, for these causes, for that the King afore his hunting (or his Commissioners Ordained to take the view of the game) his grace should have the sight of his deer where they lie at rest in their haunt: and after the hunting, because when they be driven out with strength of hounds, and noise of men and horns, they may after resort again to their haunt in the Forest.

46 If any Purlieu hunter hunt disorderly to the destruction of the Kings game in the Forest, or kill deer, or hunt before the Sun, or after, or with any other then with his menial servants, or hunteth upon the Sundaies.

47 Item, if any Purlieu hunter at any time forestal the Kings deer, whether it be by dead hay or quick-hay, (for they may not forestal, but let slip at the tail:) and whether any Purlieu hunter hath hunted in the fence moneth, or not.

48 Item, if any man cometh into the Purlieu and findeth a deer in his feeding, & goeth against the wind, and so slaieth him with bow or Grey-hound, or other Engine,

Engine, or ſoreſetteth him at any gap or pitch as the deer is wont to walk, or taketh his flight, ye ſhall do us to weet.

49 Alſo if there be any perſon that holdeth any long-running-hounds and rideth or goeth through the foreſt as the highwaies lie, and taketh not up his ſaid hound or hounds with a faſt knot, ſo that they wind the deer and fall thereto, and dryve the deer till he be dead, be it within the foreſt or without, do us to weet of the perſons names and dwelling places, and of the deer ſo killed, &c.

50 Item, if any man taketh any deer with nets, cords, ropes, double paternoſter, or other engine, ye ſhall do us to weet. Vide ſtat. 3. Jacobi, ca. 13.

51 Item, if any man chaſe or courſe, or ſet any Net or Engine, though he kill not, &c. you ſhall preſent the ſame.

52 Item, if any man cometh into the foreſt, and there ſlaieth for, Hare, Cony, or any other beaſts or fowl of Warren without authority, &c. you ſhall preſent the ſame.

53 Item, if there be any man that dwelleth about the border of the foreſt and keepeth any ſtrange Grey-hounds, and waiteth when the Kings deer be out of the foreſt, and foreſetteth the ſaid deer, ſo that they may not come home, but by that means is dead: ye ſhall do us to weet who he is, and who oweth the Grey-hounds, and the place where the ſame was done.

54 If there be any man that hath ſlain any deer of the Kings within the foreſt, of his name, and what deer was ſo ſlain, you ſhall do us to weet.

55 Item, if there be any perſon that keepeth any hounds or Grey-hounds that may not diſpend x. li. by the year of land of inheritance, or xix. li. by ye year of free hold land over all charges, or is not poſſeſſed of goods & chattels An. 13. R. 2. cap. 13. An. 1. Jacobi, cap. 27.

chattels worth C C. li. or is not the son of a Knight or Baron, or of some person of higher degree, or the son and heir apparent of an Esquire, and hunteth in the Purlieu of his own authority, do us to wet of his name and hunting, for otherwise he ought not to hunt, &c.

56. You shall in like manner inquire, whether the Forresters or any other officers have agisted any cattel in the Kings demesne Hays, and several Woods wherein no person hath common: And whether they have mowen any of the Kings lands, and taken grass and hay thereof to their own use, and sold the same to the prejudice of the Kings Deer; and how much the same grass and hay was worth, or what they received for the same.

57. Also you shall inquire, if all Agistors of our Soveraign Lord the King have truly and faithfully agisted his Highness demesn woods, and truly and faithfully lebied and received the pawnage, and fully answered and accounted for the same: And if they have not fully accompted for the same, as is aforesaid, then how much the sum is that doth still remain in their hands.

58. Item, you shall inquire of such as hath any woods adjoyning to the Forest, and in Pawnage time hath put his Swine into his own woods, and maketh gaps, and procureth his Swine out of his wood into the Forest in hindering of the Kings Pawnage: Of all such Swine you shall do us to wet, of the number and value of them, and also of such offenders therein.

59. Item, if any man hath any Swine coming into the Forest in Pawnage time, or any other time in the year, unringed, wrooting, delving, or turning up the Kings soil, which is cause of exilation and making lean of the Kings Deer, You shall do us to wet of the number and price of them, and who it is that doth do.

60. Also, if there be any man that hath any Patent by

by grant of any King or Queen, or any specialty, and it confirmed to him before any Justice in Eyre for a certain number of Swine in the Kings Forest: if he hath more than his specialty or Patent allowed doth make mention of, do us to wit, and the number and price of them, and the offender herein.

61. Item, you shall inquire if there hath been any Swine not ringed, or Goats, that hath been attached since the last Session within the Forest: of the number and price of them, you shall do us to wit; For they be forfeitable by the first Attachment, for they are no beasts of common: Also, if there hath any Sheep come within the Forest, or within the Covert, and have been attached three times since the last Session, of the number and price of them ye shall do us to wit, &c.

62. Item, you shall inquire of all strangers that have had horse, mares, beasts, or other cattel in the Forest, by which the pasture of the Kings Deer hath been surcharged or overlaid, to the hurt of the same Deer, and to the noysance of them that have common in the same forest, You shall present their names, &c.

63. And you shall inquire, if there be any person or persons that putteth any stone-horse or horses upon the forest to be fed, or commoned within the Forest, being of the age of two years, which are not of the stature of xb. handfuls high by the Standard: Or whether there be any Mares, Fillies, or Foles, which be not like to be able to bear foles of reasonable stature, pasturing within the forest: Whether the Headboroughs and Tythingmen of every of the townships within the said Forest, at every of the drift-days, according to the statute, hath duly executed the same Statute.

Anno 33. H. 8. cap. 5. Note, that the days of the drift are appointed by the Statute.

64. Also, ye shall inquire whether any officer of the Forest hath taken any fines for the Agisting of strange cattel within the said Forest, to the hinderance of the pasture.

pasture for the Kings Majesties wild Beasts, and of such as have common in the same: And what, and how much the pasture of the said Déer hath been hindered thereby, &c.

65. In like manner ye shall inquire, if any man hath spoiled or destroyed any Bush or Fern, or any other covert or defence, in such place or places where the Kings Déer hath or doth commonly use or haunt, or doth usually calve or fawn.

66. And also, whether any person to whom the King hath granted Estovers for his own only use of such Fern and Bush, or other Estovers, whether they have by colour thereof given or sold any of the said Fern or Bush, or Estovers, to others. And who hath had any such warrant for the taking of any such Estovers, and what warrant: And how much the Forest is thereby prejudiced and hurted, and of his or their names that hath so done, you shall do us to weet.

67. Item, whether any person or persons inhabiting within the Forests hath surcharged the pasture and meadow within the same: and how the same hath been surcharged, and to what loss and hurt the same hath been, you shall do us to weet.

68. And further, you shall inquire if there hath any person come into the Forest and felled and cut down any great Oaks of the Kings, and carried them away by night or day: Of the price of the horses and Cart, and of the said trees carried, ye shall do us to weet.

69. Also ye shall inquire if any person or persons hath or have come into the forest and cut down any small wood or underwoods, as Spars, Blete, Thorns, or watling rods, and carried the same away unattached, ye shal do us to weet of his name, and of the price, &c.

70. Item, if the Forester of the Forest, his Lieutenant, or any Forester browseth any Wast, boughs, or great Oaks,

Oaks, in Winter time, more for his own advantage for to ſell, than for the ſuſtenance of the Kings Deer, do us to weet, and the name and price.

71. Item, of takers of wood by the Kings licence or grant, whether they did not exceed their grant and authority, you ſhall do us to weet: And by whoſe aſſent and how much, and what perſon hath done ſo.

72. Item, if any man have any warrant to have certain trees, if he hath taken more than his warrant, or if he hath taken the ſaid trees without view of the Verderers or Foreſters, ye ſhall do us to weet, &c.

73. Item, if any warrant were granted for any Oaks to the Kings uſe, if any man take them to his own uſe, or otherwiſe beſtow them or ſell them, and of the price ye ſhall do us to weet, &c.

74. If any commiſſions were directed to any Wood-ſeller for a certain number of great Wood or under-wood, or both, if the woodſellers have well made their hedges of the coppice for the ſaving of the Kings covert: And if they have concealed any of the profit on their account that the King ought to have; And if they have incloſed any Moors, great plains, or waſts, to the hurt of the commoners, or put in cattel to the hurt of the ſprings, ye ſhall do us to weet.

75. Alſo, what Oaks or other wood the ſaid Foreſters have given, ſold, or taken, or undermined, or otherwiſe impaired, to which the officers have conſented, or otherwiſe, &c. the quantity and value of ſuch woods, &c.

76. Ye ſhall further inquire, who hath made any ſpoil or waſte in the Foreſt, of Vert, in the Kings demeſn woods; And alſo in the woods of other perſons within the ſaid Foreſt: And what, and how much every of the ſaid Foreſters hath given, ſold, or hath ſuffered to be given, or hath taken to their own proper uſe of the

woods

woods within their Bailiwicks; And if for the favour of any manner of person (that is to say) of Noble men or mean men, the said Officers have suffered them or any of them to make spoil or waste of their woods within the said Forest, what, and how much spoil it is: And if they or any of them by means thereof have taken any thing of them, what and how much it is, &c.

77. Further, ye shall inquire, how much the besture and covering of all and singular woods and shaddowing of the same, now being assarted, were worth before they were so assarted, as well of the Kings demesns, as of other mens grounds, and who hath received the profits thereof; and how much the corn is worth of all and singular the said assarts which be now sowen, &c.

78. If any person or persons doth walk in the Forest out of the Kings high way with Bow and Arrows, other than the keepers or officers appertaining to the Forest, contrary to the Assise of the same, ye shall present his or their name or names.

79. Further, ye shall inquire, if the Forester or Foresters of the said Forest, hath and have early every morning walked within his walk and limits, and so diligently used their duties at other times of the day, looking to the Kings Deer and other beasts of chase, in watching and harkening what offenders shall come into the said Forest, yea or no.

See before ca. 21. divis. 4. towards the end.

80. If any man have stopped or streitned any Church way, Miln-way, or other ways within the forest and purlieu, you shall present his name.

81. If any person or persons gather any Acorns, Crabs, or any other Mast, and maketh sale of them in the Market or elsewhere, to the hurt of the Kings Deer, and commoners there, you shall present the same.

82. Item, if any person hath made any Coppice or Closure in the Purlieu, estraitening the Kings Deer from

from the Foreſt, to the hurt of the owners, or pounded the beaſts of any commoners out of the Shire, and not put them in open pounds, whether it be in Pawnage time or not, do us to weet.

83. Item, whether all ſuch Rents, ſervices, and other duties which ought to be paid and done to the King or his Foreſters, have been duly and truly anſwered and done, yea or no.

84. And finally, if there be any perſon or perſons which hath impleaded or ſued any Plea which doth appertain to our Sovereign Lord the King, And which is within the juriſdiction of the Juſtice of the Foreſt, and before him to be determined: Or if there be any perſon that hath taken any fine or ranſome for taking or killing any Hares, and for having and keeping of any unprofitable doggs in the ſaid Foreſt, contrary to the aſſiſe of the ſame, or for any other treſpaſs which appertained to the Kings Majeſty to have reformation for, you ſhall preſent the ſame likewiſe.

Thus endeth the Charge of the Lord Chief Juſtice in Eyre of the Foreſt.

The Oath of the Inhabitants of the Foreſt, being of the age of twelve years, as the ſame hath been accuſtomed and uſed in ancient time.

You ſhall true liege man be, unto the Kings Majeſtie:
You ſhall no hurt do unto the beaſts of the Foreſt,
Nor unto any thing that doth belong thereto:
The offences of others you ſhall not conceal,
But to the uttermoſt of your power you ſhall them reveal
Unto the Officers of the Foreſt,
Or to them that may ſee the ſame redreſt.

All

All theſe things you ſhall ſee done,
So help you God at's holy doom.

See before, fol. 114. that the account of money receibed by the Verderers for dogs kept unexpeditated within the Foreſt is to be made before the Lord Chief Juſtice in Eire at the next Juſtice ſeat: And fol. 120, 121, 122. and 123. for puniſhing of Nuſances of the Foreſt at the Juſtice ſeat: And fol. 134. for puniſhment of unlawful hunting by judicial ſentence at the Juſtice ſeat: And fol. 140. of the Lord Chief Juſtice of the Foreſts Warrant to arreſt offenders whereſoever in England: And fol. 184. and 185. for puniſhment of offenders in the Purlieus at the Juſtice ſeat of the Foreſt. And note, That there lie diſperſed throughout this whole book many other matters that do reſpect the Juſtice ſeat of the Foreſt.

If the Juſtice ſeat do wrong or injuſtice, by allowing of a Claim where it ought not, &c. the Record, &c. may be removed by Certiorari, (which in the Foreſt Law is called a Venire fac' Record',) into the Kings Bench, and there the wrong ſhall be redreſſed: The manner appears, 21 E. 3. 48. Co. 4. Inſt. 294.

And if the Court will diſallow of a lawful Claim, the party grieved may have a Writ De libertatibus allocand', directed to the Juſtices of the Foreſt, Co. 4. Inſt. 297.

And in caſe of an erroneous judgment there given, a Writ of Error lies thereof, Co. 4. Inſt. 297.

CHAP.

CHAP. XXV.

1 *Certain principal notes of the Aſſiſes and Iters of the Foreſts of Pickring and Lancaſter.*
2 *Judgments and Entries contained in the Aſſiſes of the Foreſts of Pickring and Lancaſter.*
3 *Certain Judgments and principal notes, taken out of the Records of the Foreſt, digeſted into Titles.*

1 Certain principal notes of the Aſſiſes and Iters of the Foreſts of Pickring and Lancaſter; together with the Petition of the Biſhop of Coventry and Lichfield againſt the Juſtices of the Foreſt.

Touching Purpreſtures made in the Foreſt.

THe Aſſiſes of the Foꝛeſt are, That no man may incloſe any ground within the Foꝛeſt, ad nocumentum ferarum; and although a man habe licenſe to encloſe his ground, yet may he not encloſe the ſame, cum alta haia & forſata, nec cum alto palatio contra Aſſiſam Foreſtæ, v. ſupra, 74. In Aſſiſa Lanc. fol. 6.

It is purpꝛeſture foꝛ a man to build any houſe in the Foꝛeſt, although it be within his oton fꝛee land. The judgment of purpꝛeſture is thus; Ideo ipſe in miſericordia, & clauſus prædictus poſternatur. A high hedge of four foot high is contra Aſſiſam Foreſtæ. If he that doth make purpꝛeſture do grant ober his lands where the purpꝛeſture is made, both he and the grantee ſhall be amerced. If a man habe a Hoꝛſe paſturing in the Foreſt, by licenſe oꝛ without licenſe, if in the night time he enter into the Foreſt and take out his hoꝛſe, he ſhall be impꝛiſoned, ranſomed, and bound to good abearing; which

Hedges of four foot high are contrary to the Aſſiſe of the foreſt. Itin. Lanc. fol. 6. Vide ſupra, 74.

No man may enter the Foreſt in the night.

which proveth, that by the Assises of the Forest no man may in the night time enter into the Kings Forest; and if he do he shall be punished. The like punishment and order shall be taken for him that with bows and arrows doth enter into the Kings Forest, with intent to offend there, although he do no act, yet he is punished for the same. Quia per assis. Forest. voluntas reputabit. pro facto. v. supra, 133.

Itinere Pickring f. 3 b. Voluntas reputabitur pro facto.

He that doth cut down *ligna virida*, is a trespasser in *Vert*.

To cut down within the forest ligna viridia, or Ramos virides, is finable per assisam forestæ. He that cutteth down Underwoods, Thorns, Elder trees, Boughs, lignum siccum, siccos ramos, & hujusmodi, is a trespasser in Vert, v. supra, 52.

Itinere Pick. f. 3.

If Estovers be allowed to any man for making of his hedge, and after one year he burneth up the same hedge, where otherwise they would have continued two years; in this case per Assisas forestæ he shall not be allowed any new Estovers. And if he take more Estovers at one time than he ought to do, the Estovers shall be seised, and he shall make his fine therefore.

If any man cut down bushes or thornes within the Forest, and carry the same away in his Cart out of the Forest; in this Case the Cart and Horses shall be seised to the King, and he shall fine to the value of the Wood, &c. If he that hath Estovers in the Forest do make thereof Hurdles, and do sell them, he is punishable. If any cut down green hue within the Forest, and doth convey the same upon Horse, he shall forfeit the price of the Vert, and his Horse. Vid. supra, 53.

Item, if the people of a whole Town-ship do make waste in the green hue of the forest, the whole Township shall be fined, viz. de villata de C.xx.s.

If any man do set any dry Oaks on fire within the forest, he is punishable per Assisas Forestæ.

If

If any ſwine be found in the foreſt tempore vetito, they ſhall be forfeited to the King. The ſame law is of ſheep, and goats, found in the foreſt in Menſe vetito & Warda facta. v. ſupra 91. Itinere Lanc. fol. 7.

If any man do ſuffer any bridges or high wayes to be unrepaired, then whoſoever ought to repair the ſame, he ſhall make fine, & ſhall be diſtrained to amend the ſame, per aſſiſ. foreſtæ, or elſe their land ſhall be ſeiſed. v. ſupra 120. b.

Item, That no foreſters may make any attachments upon any perſon within the foreſt before that they be ſworn as they ought to be, Quia eſt contra aſſiſam foreſtæ. v. ſupra 200. The Foreſter muſt be ſworn: Itinere Lanc. fol. 7.

If any ſubject habe any wood within the foreſt, if his Woodward make default at the Juſtice ſeat, his wood ſhall be ſeiſed into the Kings hand, and ſo it ſhall remain until he habe replebied the ſame, and made his fine. v. ſupra 60.

Item, if any foreſter take any money for Barke, his lands ſhall be ſeiſed for the money. Ibidem.

Item, If any white Tawyer do dwell in the foreſt, he ſhall be removed, and make fine: for they are the common deſſers of ſkins of ſtoln Deer. Ibidem.

Item, If any take Hawes, or deſtroy Eyries of Hawks in the Kings woods, they ſhall make a fine for the ſame v. ſupra 60.

Item, According to the Articles of Huy and Cry, the orders of the Aſſiſe of the foreſt are: that if Huy & Cry be made by the miniſters of the foreſt if it be not purſued and followed with effect: then ſhall the Townſhip that are faultie therein be well fined. v. ſupra 145. Huy and Cry. Aſſiſ. foreſtæ Articulo 11. Itinere Lanc. fol. 7.

Item, That at every Juſtice ſeat of the foreſt, the number of Deer, and the number of trees that habe been given away by good warrant or otherwiſe, and ſuch Deer as habe died, or habe been killed or otherwiſe, and the Itinere Lanc. fol. 8.

wind-falls must be presented. Likewise the profit of Pawnage, Rushes, Fearn, Gorse, Sedge, and such like must be presented there also. v. supra 60.

Novæ Assisæ Forestæ per Basset & Hungerford. 11. E. 3.

It appeareth in the new Assises, precepts, and ordinances of the forest, made and set forth in Anno 11. E. 3. by Basset and Hungerford, that a man may be a forester in fee, in jure uxoris suæ, and may appear by Attorney at the Justice seat ad facienda omnia quæ forestario incumbunt durante Itinere prædicto.

Item Pickering, fol. 2. b. Custos Forestæ is mentioned in the statute of Anno 1. E. 3. cap.

I find, that besides all the officers and ministers of the forest there was also one man that was Custos totius Forestæ, and another Supervisor Forestariorum; quod nota.

By the forest Law Roger Bigot Earle of Norff. did forfeit his forestership in fee of the forest of Pickering. Whereby it is to be noted, That an Officer in fee may forfeit his Office.

Itinere Pickering, fol. 20.

Item, Nicholas Mevill and divers offenders were indicted, for that they, with bows and arrows, and dogs, had killed xliij Stags and Hinds within the forest, and in despite had cut off their heads, and set them up upon stakes: And for this hainous offence they were first committed to prison, and grievously fined: and after according to the Charter of the forest, they were bound to their good abearing, And he who is indicted for forest Causes, if he be after pardoned by the King, his pardon is allowed, but he shall put in sureties to be of good abearing to the forest.

Itinere Pickering, fol. 3. Offenders in the Forest bound to the good abearing. Ibidem, fol. 3. Radulphus Hastings, and Hugo Hastings.

Item, He that receiveth venison of such as have trespassed in the forest, shall be as well punished as the principal. v. supra 143. And he that stealeth venison in the forest, and doth carry the same away upon his horse back, the horse shall be forfeited per Assisam forestæ. But if they take the horse of a stranger which is ignorant of the fact, the horse shall not be forfeited, Quia ignorantia facti excusat, ignorantia Legis non excusat.

Itinere Pickering, fol. 5. Itinere Pickering fol. 3. In trespass in the forest there are no accessories, but they are all principals.

This

This hath been taken for a very good form of indictment, Quod A.B. eſt communis malefactorum Venationis ubique in foreſta, & malefactoribus venationis conſentiens. It is a good indictment, Quod I.S. conſuetus eſt ponere Acutas Catheas in berkis hajarum ad feras capiendas: And upon this indictment was the offender outlawed. Ibidem, fol. 3. The horſe of a ſtranger ſhall not be forfeited.

Item, an Abbot that lent a bow and arrows to another man, to the intent to kill the Kings Deer, was fined and ranſomed, v. ſupra 133. A.B. venit in parco de S. ad malefaciendum de venatione. And this was taken to be a good indictment. A keeper was indicted for receibit g a bribe, to the intent to conceal an offender. If a man find a treſpaſſer in the foreſt, killing or breaking up any Deer, and findeth him with the manner, and doth receibe a reward to keep his counſel, he ſhall be impriſoned, fined, and ranſomed. Itinere Pickering fol. 5. Lending of a Bow and Arrows to kill the Deer is finable.

Two men were indicted for ſtriking an Hare in her form, and for taking of another within the foreſt: the one of them was committed to priſon, and made fine & ranſom for the ſame offence, and was bound to the good abearing of the foreſt; and the other was outlawed: whereby it is to be noted, that Hares are beaſts of the foreſt. v. ſupra, 47. Pickering, fol. 5. Caſu Bulmer. Pickering 13. A Hare is Veniſon. Aſſiſa de foreſta. art. 8.

By the aſſiſe of the foreſt, Si Leoparii inventi fuerint currentes ad aliquod nocumentum ferarum, Foreſtarius debet retinere eos, & præſentare in præſentia viridariorum, & mittere eos Domino Regi, vel Capitali Juſticiario foreſtæ. Aſſiſa de foreſta. art. 8.

Item, if a forester do take an offender with the manner, he may carrie him to priſon. Itinere Pickering, fol. 6. & 41 in le caſe de Johannes Barlar & Johannes Auguſtye.

The Abbot of Whitby did kill a Hart within the river of Dervent, which was the metes of the forest of Pickering: the Abbot and his company were indicted for the ſame. Quia ceperunt unum Cervum in aqua de Dervent: quod eſt Marchia foreſt. & venationem ill' ſecum aſport. The like preſident is fol. 6. W. Moyſon.

And for this he made his fine and ransome, and was bound to good abearing, v. supra 75. & 182.

Ibidem, fol. 6. b. affearers.

It is to be noted, that all the freeholders within the Forest, as well spiritual as Temporal, must in any wise appear before the Justice seat, primo die Itineris. And of every town the Reve, and four men also with him, which is called præpositus & quatuor homines, &c. And if they make default, they shall be amerced, and their amercement shall be affeared by affearers there.

Itin. Pickering, fol. 6. b.

It is directly against the assise of the forest, that any Baker or Brewer should bake or brew in the forest.

Killing of Deer by warrant.

Item, That the principal Forester at the Justice seat shall make an account of all the Deer that hath been killed by Warrant within the forest. And in the same place shall judgment be given which be good Warrants, and which are not. And for those that are not, the forester shall be punished.

Assisa Lanc. f. 3. Pickering, fol. 18. 7.

Item, per Assisas Forestæ, It appeareth that Tithe was paid of Venison. Likewise for Trees, the chief forester must make an account of them, by what Warrant they were cut down. And for those which he cannot shew good Warrant, he shall be amerced, Vide supra 60.

Assis. de Pickering fol. 7. b.

Item, If the Forester do give a Nobleman a Course, and his dogs do kill: this must be presented at the Justice seat.

Assarts.
Assisa forest. de Pickering fol. 7.

And as touching assarts per Assisas Forestæ: He that is presented to have assarted or enclosed any land within the Forest out of the Kings Demesnes in his own Fee, or in the Fee of any other man, he shall make Fine for this offence. And if he will after Compound with the Justice, he may continue the same, paying to the King a yearly Rent, which must be entred of Record at the time of the arrenting thereof. V. supra 69.

An

And as concerning Agistors of the Kings woods: every Agister within the Forest must bring before the Justice-seat a just account what money he hath received for pawnage. And the form of the entrie thereof is thus, Rogerus M. respondebat de iv. s. de pannagio porcorum de Estwood, &c. v. supra 83.

Item, if any man take off the skin of any wild beast that dieth of the Murein within the Forest, if the same be presented, he shall be punished for the same: and if he come in, he shall pay the price of the skin, and be amerced for the offence. Assisa Foreſtæ. Pickering. f. 8.

Item, it is finable to permit a strangers beasts to pasture in the Forest, and the form of the entrie of the Record is thus: Item presentat quod A. B. agistat omnia averia sua in mora de F. infra Forestam ad dampnum domini Regis, & ad nocumentum ferarum, Et nesciunt quo warranto Ideo præceptum est viceom' quod venire faciat eum. Et postea testatum est per ministros forestæ quod ipse nihil habet infra Forestam. Ideo pro agistamento prædicto in misericordia, & remaneat agistamentum in manu domini Regis. v. supra 84. 98. & 120. Agistments Assisa de Pickering, fol. 10. Alicia Gower.

If any owner of any woods in the Forest do appoint a Woodward in his woods where there was neber any before, it is finable, per Assisas forestæ. v. supra 60. Ibidem.

Item, he that without warrant of the King pulleth down his ancient house in the Forest, and setteth it up in another place without the Forest, this is finable. Ibidem.

Item, if the Forresters do disturb the Cattel of any person or Township, to have Common within the Forest, whereby they have wrong, or do take any Money of them by extortion: this is finable by the Justice-seat. v. supra 98. Ibidem.

And because such like matter may chance hereafter at a Justice-seat, I have here put down a President to be followed: viz, Item present' Quod Prior Hospitalis

Agiſtments.

A claim the firſt day.

Sancti Johannis agiſtat averia extraneorum apud F. infra limites Foreſtæ quod eſt ad nocumentum ferarum & ad dampnum Domini Regis. Et neſciunt quo Warranto. Ideo præceptum eſt Vicecom' quod venire faciat eum: Poſtea venit prædictus Prior, & dicit quod ipſe virtute cartarum progenitorum Regis nunc factar' prædeceſſoribus ſuis debet agiſtare in loco prædicto. Et petit quod poſſit admitti ad finem faciend' cum Domino Rege pro clameo ſuo faciendo licet primo die Itineris non fecit. Et admittitur ad finem 13. s. 4. d. per plegios. A. & B. vide ſup a. 84.

Picker. fol. 10. In caſu Melſa.

Item, if a man do make Charcoals of Bzouſe wood within the Fozeſt, it is fineable. And if he will make Title ſo to do by Pzeſcription, and doe not make his claim thereunto the firſt day of the Juſtice-ſeat, he ſhall then anſwer foz the value of the Coales to the King. Vide ſupra 60.

Item, it belongeth to the Juſtice-ſeat to inquire who ought to repair bzidges decayed within the Fozeſt, and to puniſh the offenders. vi. ſupra 120.

Ibidem. The Parſon of Skalbies Caſe, fol. 11. Magna Charta, cap. 1.

Item, a Parſon of a Church was indicted, foz that his dogs were not expeditated oz lawed. The Pzioz of Bridlington Parſon of Skalby pleaded, that by the great Charter of England, he was not bound to expeditate his dogs: foz there was one Article therein, Quod Eccleſia Anglicana ſit libera, & habeat omnes libertates ſuas integras & illæſas, &c. And by this plea he was diſcharged of the Indictment, Eborum, fo 37.

Item, there may no man fiſh in any Riber that is a boundary of a Fozeſt, unleſs he habe Warrant. vide ſupra. 57.

Ibidem, fol. 11. The Prior of Bridlington, fol. 12.

Item, they are to be indicted that obercharge the Common within the Fozeſt. vi. ſupra. 103 & 120.

Item, there may no ſubject without Warrant habe a Waccary within the Fozeſt.

Item,

Item, a Riding Foſter was preſented and fined for that he was negligent in his office, and did oppreſs divers people in taking of oats, and ſuch like.

Item, if any man do interrupt the Werderor or Regarder of the Foreſt, he ſhall make Fine.

Item, it is alſo fineable to dig turfs within the Foreſt. And likewiſe to take Feſants, Partrigdes, or other Birds within the Foreſt. Foules of Warren.

Item, if any man do offend in cutting down of Wert, and after dieth before preſentment made thereof: yet in this Caſe the K. ſhal be anſwered for the treſpaſs by his Heirs or land Tenants, per Aſſiſam foreſtæ. v. ſupra 65. An. 8 E. 3. Pick. fol. 22.

2. Judgements and Entries contained in the Aſſiſes of the Foreſt of Pickering and Lancaſter.

Placita foreſtæ de Pickering coram Juſticiar' itinerantibus Anno viij. Domini Regis Edwardi 3.

BErnardus de Berghe viridar' venit & reddidit rotulos ſuos tam de viridi quam de venatione tangent' iſtam foreſtam, *&c.* Guillielmus Ward viridar' non venit ad rotulos ſuos redd' ideo præceptum eſt vicecom' ſeiſire omnes terras & tenementa ejus, *&c.* Poſtea venit præd. Guillielm' & petit admitt' ad finem faciend' cum domino Rege pro defalta primi diei: & admittit' ad finem die Marcii, & quoad rotulos ſuos dicit quod furati fuerunt ab eo quibuſdam malefactoribus, & petit quod poſſit admitti ad finem faciend' cum domino Rege in hac parte, & admittitur pro fine 100 s.

Preſentatum eſt per foreſtarios & convictum per viridarios quod Nich. Mevil & alii, *&c.* venerunt in foreſtam iſtam, *&c.* cum arcubus ſagittis & leporar' & ibi ceperunt ii. Cervos, *&c.*

Item quod Guilliel. Fiſhborne eſt communis malefactor venationis domini ubique in foreſta iſta & malefactoribus conſentiens, &c.

Compert' eſt per viridar' rotulos iſtius foreſtæ quod Edmund' Haſtings poſtquam tranſgreſſus eſt de venatione in foreſta iſta dimiſſus fuit coram eis per nuncupator. *&c.* qui manu ceperunt habendi eum hic, *&c.* primo die itineris, qui modo eum non habent, *&c.* ideo, *&c.*

Johannes Kilmington nuper Cuſtos iſtius foreſtæ dicit prædict. feræ acciderunt in Morina quorum corpora putrida fuerunt ſuſpenſa ſuper quercos, & de hoc vocat record' rotulorum viridariorum. *&c.*

Miniſtri foreſtæ dicunt quod conſuetum eſt ante hæc tempora præſentare quolibet tertio anno de canibus non expeditatis.

Item præſentant quod Johannes de Aſſlaby cepit infra dominicum quatuor quercus prætii 4. d. Et dimiſſus fuit per viridar. manucaptor. uſque ad iſtam aſſiſam, Qui modo non venit, *&c.* Ideo ad judicium de manucaptoribus. Et prædict. Johannes reſpondeat domino Regi de pretio prædicto. Et pro forisfacturo ejuſdem 4 s. *&c.*

Et quod Humfrid. Tober cepit xi. quercos virides infra dominicum precii cujuſlibet i. d. & carriavit illos cum uno plauſtro & 6 bobus quæ appretionet' viz. plauſtrum ad 6. d. Et boves ad 16. s. precii cujuſlibet 2. s. 8. d. unde tenent' terræ & tenentotum Richardi de S. viridar' iſtius foreſtæ ad cujus manus prædict. devenit reſpondeant. Et ſimilit. pro forisfact. ejuſd. xi. s. v. ſupra. 54.

Item preſentant quod Prior de Maldon cepit ix. plauſtra ſpineti in A. infra dominicum precii ix. d. Et per viridar' dimiſſus fuit per manucaptor' uſque ad aſſiſam iſtam, *&c.* Qui modo venit, *&c.* Et ſuper hoc convictus oneratur erga dominum Regem de precio prædict. Et pro forisfact' ejuſdem, ix. s.

Item quod Robertus Scalby cepit unum viridem quercum

cum,&c. precii j.d. unde tenent' viridar' reſpond' de precio prædict. Et pro forisfactur' vi. d. ad quorum manus precium & forisfact' prædict. de venerunt.

Item preſent' quod x. Strikes qui fuerunt Johannis Rouſeby inventi fuerunt in haia de D. per Wardam factam & non agiſtati, Qui capti fuerunt tanquam forisfacti per per aſſiſam foreſtæ & appretiant' ad xx. s. Et retraditi per viridar' eidem Johanni per plegios, &c. ad dictos Strikes habend' ad iſtam Aſſiſam, Qui modo non venit: Ideo ipſe in miſericordia: Et nihil ominus idem Johannes oneretur de pretio prædicto.

Miniſtri foreſtæ dicunt, &c. Quod à tempore quo non extat memoria hominum, &c. præſentatum fuit per foreſtarios ad Attachiamenta iſtius foreſtæ de canibus prædicti Abbatis de Rivall, &c. in maner' ſuis prædictis non expeditatis; fol. 16.

Miniſtri foreſtæ dicunt, &c. quod cum contigerit quod woodwardus prædict. Prioris Sancti Johannis Jeruſalem non veniet ad Attachiamentum foreſtæ prout alii woodwardi diverſorum Dominorum in Foreſta veniant: Tunc ipſe woodwardus ſemper conſuetus eſt ibidem amerciari: Et amerciamentum inde ad opus Domini Regis levari, ſicut & de aliis woodwardis qui non veniunt & fuerunt amerciati.

Miniſtri Foreſtæ dicunt, &c. quod Thom. Wake, & omnes à tempore quo non extat memoria hominum habuerunt, &c. liberatione boſcum in communibus boſcis ſuis pro ſe, &c. ad quodlibet attachiamentum, & hoc ad ſufficientiam boſci.

Item dicunt quod eſcapia, viz. Emendæ de forinſecis averiis infra metas foreſtæ invent' per foreſtarios, eſcapium inde præſentatum eſt & fuit à tempore quo non, &c. Ad attachiamenta foreſtæ prædict', & ibidem dominus foreſt' habuit emendas.

In

In clameo Burgenſ. de Scargeburgh coram domino Wilhelmo Veſeye Judiciar' Foreſtæ.

ET quia viridarii prædicti nihil reſponderunt de tranſgreſſ. venationis factis in foreſta prædict. hoc anno. Ideo committuntur priſonæ. Et educti venerunt & fecerunt finem per iii. li. &c.

Abbas de Whitbie clamat habere viridarios ſuos proprios de libertate ſua de Whitby eligend' de cæter' in pleno comitatu Eborum prout moris eſt ad reſponſiones & præſentationes faciend' de tranſgreſſ. quas à modo fieri contingent de viridi & venatione infra metas foreſt' de Whitby, coram Juſticiariis domini Regis Itinerant. ad placita foreſtæ in partibus illis, & non alibi, Sicut viridarii foreſtæ domini Regis hujuſmodi reſponſiones & repreſentationes facere debent & conſueverunt.

In Itinere Lancaſtriæ.

FOreſtarii venerunt & dicunt pro ſeipſis & omnibus aliis Foreſtar' iſtius foreſtæ, Quod ipſi foreſtarii nunquam fuerunt onerati de aliquibus Rotulis, ſeu indictament' tangentibus foreſtam. Et quod omnes Rotuli et Indictament' remanent penes viridar', &c. Et hoc parati ſunt verificare per miniſtros, &c. Qui quidem miniſtri ad hoc Jurat' hoc idem teſtantur, &c.

Preſentatum eſt quod Johannes Lancaſtriæ cepit tres quercos in foreſta iſta. Qui venit & dicit quod eas habuit ex liberatione foreſtar' pro eſtoveriis ſuis, &c. Et quia hoc teſtatum eſt per Rotulos viridar' eſſe verum, Ideo dictus Johannes inde eat, &c.

Et quia, inſpectis Rotulis viridar' iſtius foreſt', nihil compertum eſt de prætio corticum xl. Quercum prædict', Ideo ipſi liberantur priſon'. Et educti finem fecerunt cum domino in hac parte dimi' marc. No-

Nomina Miniſtrorum foreſtæ de Lancaſtria.

Wilhelmus Blount, Cuſtos totius foreſtæ & Seneſchallus, Robertus de Ratclive magiſter foreſtarius ejuſdem foreſt', Wilhelmus de Holland Superviſor foreſtariorum totius foreſt', Johannes Balridge foreſtarius de feodo in warda de Louſdale.

Robertus Fowcher nunc cuſtos iſtius foreſt. venit, &c. Et illo amoto Wilhelmus de Clapham Juratus eſt & efficitur cuſtos ejuſdem foreſtæ.

3. Certain Judgements and principal Notes, taken out of the Records of the Foreſt, digeſted into Titles.

The Prior of Lancaſter had by Charter every day two cart load of more Boys to be burnt in his priorie: And becauſe he took viridem boſcum pro mortuo boſco, contrary to his charter, the benefit and profit of his eſtobers was ſeiſed into the hands of the Lords of the Foreſt: For the which, the Prior made Fine: pro eſtoveriis rehabendis ad 3. l. 6. s. 8. d. & rehabuit eſtoveria ſua Itiner' Lancaſtr' Anno 10. Ed. 3. fol. 65. a. And here you may note, that for abuſer there groweth good cauſe of ſeiſer. See the like, in the caſe of the Burgeſſes of Lanc. ib. fol. 66. vi. ſupra 103. Note, if a man have eſtobers by grant, as appurtenant out of a Foreſt, unto a certain meſſuage: In this caſe if the ſame eſtobers be ſpent in any other houſe, this is a good cauſe of ſeiſer of the ſame eſtobers; for this is an abuſer, the which is a cauſe of forfeiture. Itiner' Lanc. Anno 10. E. 3. fo. 67. b. The ſame Law is of a common of paſture.

No man may agiſt within his own Lands within the regard of the Foreſt, except he have ſpecial licenſe ſo to do. In clameo Abbatis de Rival. Itiner' Pick. 10 E. 3. f. 166. quære de hoc; for the words of the ſtat. of Carta de foreſta are

are t' est: unusquisque liber homo agistet boscum suum in foresta pro voluntate, &c.

Allowances. If the Justice of the forest do any thing stick at the allowing of any mans liberties claimed before them, then may the party grieved have a writ of allowance, or a writ to proceed to allowance. Itiner' Pick. f. 182. a. Where the Justice of a Forest doth stay over long in allowing of a libertie that is claimed, then may the partie grieved purchase the Kings writ of allowance directed to the Justice of the Forest, commanding him to allow the same. The tenor of which writ, doth appear: Anno 10. E. 3. Itiner' Lanc. fol. 9. folio 65. In the claim of the Abbot of Furneaux. If at one Justice-seat certain liberties be allowed: at another time the same allowance may be pleaded, quod nota: And the Record of the allowance shall be sent down by writ unto the Justices. vi. supra 98.

Itiner. Pick. fol. 16. Abbas de Rival. & f. 23. Abbas de Whitby. Ibid f. 116. Abbot de Rival.

Appurtenance. It was admitted and adjudged in the claim of one Lambeson that to be quitted of Pannage, in tempore Pannagii, might be appurtenant unto a mans Freehold. An office of a woodward and the bark of trees felled was claimed to be pertaining unto a manor, and adjudged accordingly. To be quit and discharged of pawnage, and pawnage of Swine within a Forest may be by prescription appurtenant unto Lands. And to claim that he and his ancestors, à tempore quo, &c. is a good title without saying that he and his ancestor, and all they whose estate he hath in certain Lands, &c. à tempore, &c. vide supra. 98.

Asserts. No man may assert or exclor, but by the Kings warrant: in casu Prioris sancti Johannis Jerusalem in Assis. Forest. de Pick f. 18 b. vide supra 69.

Pickering, f. 15.

Note that the Prior of Saint Johns did make his claim by one of his confriers, whom he made his Attornie, being a dead person in Law, quod nota.

Attorney.

The

The Lord of a forest may enter by his Officers into any mans wood, the which is growing within the regard of the forest, and cut down brouse wood for the Deer in Winter. vi. supra 60. *Brouse-wood.* Assisa de Pick. fol. 19.

Note, that it appeareth by the claim of the Abbot of Meriball, that within the regard of any forest no man may build either houses or barcaries: quod nota. It appeareth that within the Forest, no man may build any new houses or barcaries, or use tillage in any new grounds, without special License. It appeareth by a claim made by the Abbot and Covent of Merivall, that none may make any new buildings within the forest, except he have good warrant from the Lords of the forest: for the Abbot made claim by grant that he might make omnimodum commodum, suum sive assartandum sive edificandum modis omnibus, &c. And if he might do it without warrant, it had been in vain to have had licence, and also to have made his claim for the same. And that the assises of the Forest are so, it appeareth by a Presentment made in a Case of the Prior of Lancaster. vi. supra 74. *Buildings.* Lanc. tol. 5. Assisa Lanc. fol. 9.

Cablicia is properly Brouse-Wood: Itiner. Lanc. 10. E. 3. fol. 172 Itiner. Pick. *Cablicia*

A claim made for Common of Pasture is good. It is to be noted, that neither sheep nor swine are allowed to have Common within the forest: quia bidentes & porci non sunt animalia ad communicandum in foresta, sed præbent exilium ferarum in eadem in clameo Burgens. Lanc. fo. 30. the same law is of goats. In clameo Burgens. de Preston. f. 5. vi. supra 80. 84. 98. & 106. *Common of Pasture.* Lanc. fol. 13. Sheep, Swine, nor Goats are allowed to have Common in the Forest.

Nota, That if any man do make a claim and do after make default, their liberty shall be seised into the lords hands: for default is a cause of seisure: in the Case de Domino de Gersingham, and others. A woman tenant for term of life of a Park, within the forest of Lancaster *Default.* Itinere Lanc. fol. 5. Vid. sup. 99.

ſter made her claim, ſor that being called Knoſhſley Parke, and alſo ſor a free warren, and after made deſault: whereupon one Latham being tenant in reverſion was received, and made claim both ſor the Park, and alſo ſor the free warren: and becauſe he did not ſhew forth any good matter to warrant his Title, therefore was it adjudged, quòd clauſus prædictus proſternatur & remaneat Foreſta, ut prius, & quòd Warrena præd. capiat. in manus domini, &c.

Ibidem.

Demurrer. Pickering. f. 21.

If it chance a demurrer in law do fall out between the King and his Subjects, upon a claim before the Juſtice of the Foreſt: they may adjourn the ſame into the Kings Bench, there to be determined. Nota, the Preſident is excellent.

Diſcontinuance and Reſummons. Pick. fol. 15.

If a juſtice ſeat be diſcontinued, by the not coming of the juſtice: in this Caſe, the King by his Writ may revibe the ſame again. It is to be noted, that in Caſe the Pleas of the Foreſt be diſcontinued, by the not coming of the juſtices; that in that Caſe the Pleas may be revibed again by the Kings Writ of reſummons, whereby all things ſhall be and remain in Priſtino ſtatu. See the preſident thereof. Itiner. Pick. fo. 15.

Expeditatio canum. Pick fol. 16.

Patet, that ſecund. aſſiſas Foreſtæ expeditatio canum muſt and may be every third year, vi. ſupra 108.

Expoſition by uſage. Pick. fol. 17. Lanc. fol. 9.

William the Earl of Warren, Boheme and Marton, granted by his deed, unto the Abbot of Furneaux, that he and his ſucceſſours, might take within his Foreſt of Lancaſter, maeremium, &c. quæ ad uſus ſuos ſunt neceſſaria, & nominatim ad piſcariam ſuam de Lanc. faciend. quicquid eis ad hoc opus fuerit. And in his claim the Abbot claimed ſufficient timber both for his Manor of B. and alſo for his Piſcary, and for all other things neceſſary, &c. And that by that word Maeremium, he had uſed and enjoyed the ſame ever ſince the making of the ſame grant without the view of the Foreſters. And the

uſage

usage being thus found by the Jury, his title of claim was allowed. Here it is to be noted, that many times dark and obscure words are expounded by usage: as appeareth in this president, quod nota: for this word Maeremium is expounded by the mean of usage, for timber to build withall. And this word Maeremium is also in this place expounded for Mesuagium. Maeremium.

To be acquit of escapes within a forest, doth signifie that where after the assises of the forest, if any mans beasts be found within the Lands forbidden, or in the fence time, within the forest: then the Law is, that the owner of the same beasts shall be amerced for every foot i. d. And if the second time the beasts be found again, then to be amerced in like manner. And if the third time they be taken offending, ut supra: then shall the same beasts be forfeited unto the Lord of th forest: of all which amercements, he that is quietus de escapio, is clearly discharged, ibidem. vide supra 105. *Escapium.* Pick. fol. 15. Ibidem, 17. Ibidem, 19.

To be quit of foot-geld, is to keep dogs within the forest unlawed, without any amercements, fine or forfeiture, ibidem. vi. supra 109. *Foot-geld.* Pickering, f. 17. Ibidem.

To be quit of chiminage, is a discharge of chiminage silver paid for passage through the forest, with carriage of any thing upon horse back; ibidem. Chiminage.

Note that the Lord of a Forest hath this Prerogative ober all men that dwell in his Forest: that at such time as he is disposed to chase within his Forest, every man must be ready to hold a Greyhound, for the taking of wild beasts in such places as they shall be appointed, or else the defaulters to be amerced. And he that hath the benefit or discharge of this word Tristis, is not bound by the assises of the Forest to give any such attendance. ibidem. Ibidem. Tristis.

By reason of Charter, the Prior of Lancaster had the tenth.

Faux claim Lanc. f. 3. f. 64. Pick. fol. 15.

tenth of all the Venison, viz. in carne tantùm, sed non in corio. And because he made a false claim, and said that he ought to have the tenth of all the Venison within the Forest of Lancaster, as well in carne as in corio, therefore the Prior was in misericordia de decima venationis suæ in corio non percipiendo &c. Thus ye see that for the offence of a false claim, the punishment is to make fine, and not to seise the same.

The fence Moneth. *Fence Moneth.* Pick. f. l. 20.

The fence Moneth is always xl. dayes before Midsomer, and xl. dayes after Midsomer. Quod nota, every common Moneth is but xxviij. dayes, but the fence Moneth is xxxi. vi. supra 92.

Fine. Pickering, f. 10. 15. Johanne de Melsa. In Clameo Abbatis de Merival. f. 69.

Nota, that such as ought to make claim, &c. by the assises of the Forest, they ought to put in their claim the first day of the Justice seat: or else at any day after, their claim shall not be received without fine. And when the claim is once put in, if the claim be in any point faulty, if they will amend their claim they must make fine: quod nota ibidem. vide supra 100.

Goats. Pick. fol. 67.

No Man may common with Goats within the forest, without especial Warrant. Nota, that Capriolus non est bestia venationis Forestæ, quod nota. vide supra 98. 106.

Agrant made to a commonalty Lanc. fol. 4. Pick. fol. 21.

Nota, that all the inhabitants within the Forest of Lancaster being free elders, did make claim to be acquited of all manner of bert, and of regard, and of divers other things: and this claim was allowed of in Eyre, by reason that John Therle of Marton, being Lord of the Forest of Lancaster, did by his Charter grant the same by these words: Sciatis me concessisse omnibus vilitibus & omnibus thengis, & omnibus liberis tenentibus qui manent in Foresta mea de honore de Lanc. quòd possint, &c. By this president ye see that a grant was made unto a Commonalty and good, &c. There ye see that a subject is and may be lord and owner of a Forest.

Pick. fol. 19. 19. *Hawks.* Gilbert de Acton, f. 148.

Melsa

Belſa claimed within his woods, to have the Eirie of falucons, marlens, & ſparrowhawks: And notwithſtanding the letter of the great Charter of the Foreſt, it was enquired by the miniſters of the Foreſts, whether he had uſed to have the ſame, vi. ſupra. 60.

Heath, Whenes, and Turfes.

It appeareth that no man may cut down Heath and Whenes, or dig Turfs within the Foreſt, without good warrant.

Pick. fol. 19. *Non uſer.* Pick. fol. 15. 17. 18. fol. 166.

If a liberty do make a park be granted by the King, and is not after uſed, this non-uſer ſhall be inquired of. It may be gathered alſoe within the claim of the Abbot of Rival, as in divers other claims, that after that a liberty is granted, if the grantee do not uſe the ſame continually, that the non-uſer ſhall be inquired of: the which non-uſer is a good cauſe of ſeiſure. v. ſupra, 109.

Nuts. Pick: fol. 19.

It appeareth that none may gather Nuts within the foreſt without warrant.

Park. Lanc. fol. 2. Rodulphus Dacrus.

Nota, That a licence to empark and incloſe a park, muſt contain a certain quantitie of ground: and it muſt be the proper ſoil of the grantee, or elſe upon inquiſition had in due form of law the park is to be ſeiſed, &c.

That a ſubject being owner and lord of a foreſt, may give licence unto another to make and incloſe a park within the meets of the ſame foreſt, to have and hold the ſame park incloſed with all ſuch veniſons as the grantee ſhall put therein to him and to his heirs for ever. And this was adjudged and admitted for a good licence in a claim made in Eire. It is to be noted, that if ſuch a park be ſo ſlenderly fenced and incloſed, that the wild beaſts of the foreſt do enter into the park, then may the lord of the foreſt enter into the ſaid park at his pleaſure, and there hunt at his pleaſure. v. ſupra.

Aſſiſ. de Pickring fol. 64.

It is to be noted, that if any man have a Manor, whereunto doth belong a certain wood, the which wood is within the compaſs of the foreſt, or invironed with the foreſt,

Extra regardum Foreſtæ.

Pick.fol.11. the which wood is notwithstanding without the regard of the Forest: In this case by the assises of the Forest, he must make his claim by these words: viz. Gilbertus de Acton clamat tenere boscum suum de Toversdale pertinent' ad manerium suum de B. extra regardum Forestæ, viz. Illum boscum qui est ex parte Boreal', &c. And so on with all the limits of the same, &c. vide supra 58.61.

Hares, Foxes, &c. Item, the same man made claim to hunt the Hare, the Fox, the wild Cat, the Partron in B. v. supra 110. & 125.

Lanc.fol.5. Abbas de Mirival. Item, The same man claimed to have libertie to pluck up the Heath in B. by the roots, and to dig Turfs in the Moor of A. and the same to sell at his pleasure, and to carry them out of the Forest.

Pickering, f. 14. Item, To Agist, and to take the Agistment to his own use, &c. All which claims being found to be true by the ministers of the Forest, were allowed by judgement by these words, Et habeat & gaudeat salvo jure, &c.

Pickering, f.16. Reviver post mortem. Abbas de Rival. fol.166. An Abbot made his claim, and hanging his claim dieth. A new Abbot being made, declared his Plea: and being tried to be true by the Forresters, Verderors, and Regardors, the new Abbot was permitted, but in a new claim.

Nota, in the claim of the Abbot of Rival, it is apparent, that within the Regard of the Forest, no man may turn any Land into tillage, without good warrant.

Tillage. Pickering, f. 16. fol. 18. Henry the second granted unto the Abbot of York the tenth of all his Venison in York-shire by his Charter. By this it appeareth, that for wild beasts there was no Tithe due: for then might not the King have granted other persons Tithes.

Tithe Venison. Picker. fol. 19. No tything Venison by the Law, but in some places by usage. The Prior of Lancaster did claim the tithe of venison, and the Tithe of Pawnage, viz. Decimam bestiam in carne & corio per manus ministr' de Foresta. And the tenth peny of the pawnage, when the pawnage of the forest was collected. And he made his Title by vertue of a grant

grant made by the Lord of the Forest unto one of his predecessours, and his claim was allowed for good. Lanc. fol. 3.

In case one do claim by prescription, by tenure, or by grant, to be Foster of fee, and prayeth that it may be enquired of by the ministers of the Forest; In this case the Verderors, Regardors, and Agistors shall trie the Title. But if a man do claim by inheritance or otherwise any profit appendre within the Forest, as a Common of Estovers, or a pasture, or such like; In this case the trial shall be by the Foresters, Verderors, and Regardors, but not by the Agistors, prout patet, &c. In case the matter of the claim do require a Trial by the Country, there the conclusion of the pleader shall be, Et hoc paratus est verificare prout Cur' &c. Ideo inquiratur inde veritas per ministros ejusdem Forestæ. And in this case the Verderors, Regardors, and Agistors shall onely trie the Title. But yet notwithstanding, you shall see very many Presidents, that when the entrie hath been & hoc petit qd' inquiratur per ministros ejusdem Forestæ, &c. that this hath immediatly ensued, viz. & quia videtur cur hic qd' expedit & necesse est ad inquirendum tam per ministros forestæ prædictæ quam per alios probos & legales homines, &c. And thus you may see it is in the election of the Justices, whether the ministers with others may be impanelled, quod nota, to inquire if there be any president that the Countrie hath tried any Title of claim without the ministers of the Forest, &c. v. supra, 99.

Triall, by Verderors, Regardors, & Agistors. Pickering, f. 15.

Pickering, in omnibus inquisitionibus.

Lancaster, fo. 3 Lancaster, fo. 2. Lancaster, fo. 4. In clameo Johannis Acres.

Woodwards. Pickering, f. 2.

Woodwards may not walk with bow and shafts, but with Forest bills, quod nota.

Rogerus Coventr. & *Litchfield* Episcopus queritur Domino Regi de hoc, quod in ultimo itinere *Rogeri* extran', & sociorum suorum Justic. domini Regis de Foresta, in Com. *Stafford*, iidem Justic. boscos ipsius Episc. de maneriis suis de *Cannock* & *Ruggelegh*, in manum Domini Regis

ſeiſire fecerunt, & in manum Domini Regis adhuc detinent injuſte,& ad grave dampnum ſuum,& exhereditionem Eccleſiarum ſuarum de Coventr. & Litchfield manifeſtam, &c. Et Rogerus, & alii Juſtic.ſocii ſui ven'. Et recordantur quod in itinere prædict.per veridar' foreſtar',& alios fideles Domini Regis coram eis preſentatum fuit, quod prædict. boſci ſuper Dominum Regem, & progenitores ſuos per ipſum Epiſc. & prædeceſſores ſuos purpreſtabantur, & à tempore quo bene licet Juſtic. de foreſta in itineribus ſuis purpreſturas ſuper dominum Regem aut progenitores ſuos factas infra bundas Foreſtæ ſuæ per Aſſiſam Foreſtæ in fine itineris ſui capere in manum Domini Regis, & retinere,& ea ratione boſcos præd. eo quod non ſunt infra bundas Foreſtæ, & ſuper Dominum Regem & Progenitores ſuos purpreſtabantur, ut præd. eſt, in manum Domini Regis ſeiſire fecerunt,&c. Et Epiſc. bene cognoſcit quod boſci præd. ſunt infra metas Foreſtæ, ſed dicit quod Dominus Rex Ricardus conſanguineus Domini Regis nunc dedit, & carta ſua confirmavit Eccleſiæ beatæ Mariæ, & beati Cedde de Litchfield, & Hug. quondam Epiſc. Coventr. prædec' ſuo & ſucceſſoribus ſuis Villam de Ruggeleigh, & Villam de Cannock, cum Eccleſiis hundr. & omnibus aliis libertatibus & pertin. ſuis habend. & tenend. in liberam puram & perpetuam elimoſinam per cartam ſuam quam profert in hæc verba. Ricardus Dei Gratia Rex Angliæ, &c. Archiepiſ. Sciatis nos dediſſe,& hanc præſenti carta noſtra confirmaſſe, pro Redemptione peccatorum noſtrorum, &c. pro anima Patris noſtri, & Parentum noſtrorum,Eccleſiæ beat'Mariæ,& beati Cedde de Licthfield, parchamentum primum & Hug. Epiſc.Coventr.& ſucceſſoribus ſuis Epiſcopis Coventr. Villam de Ruggeleigh, & Villam de Cannock, cum Eccleſiis, hundredis, & omnibus libertatibus,& pertin. ſuis,habend. & tenend. in liberam puram & perpetuam elimoſinam. Quare volumus & firmiter præcipimus quod præfatus Epiſc. & omnes ſui

ſucceſſo-

ſucceſſores poſt eum habeant & teneant præd. Villas in puram & perpetuam elimoſinam cum Eccleſiis, hundredis, & omnibus aliis pertin. ſuis cum ſacha & ſocha, thol & thein infangenethef, & bene pure, libere, quiete, integre & plenarie & honorifice in boſco & plano in pratis & paſcuis, & paſtur' vivar. & ſtagnis, & mareſcis in aquis, & molendinis in viis, in ſemitis in homagiis & releviis, in ſerviciis & omnibus aliis rebus, & locis in burgis, & extra burgam, & cum omnibus libertatibus, & liberis conſis' ſuis teſtibus &c. Dat' per manum Willi. Elienſis electi, 4. die Decembr. Anno Regn. n. primo. Præterea, idem Dominus Rex Ricard. conceſſit, & carta ſua confirmavit præd. Hug. prædec', &c. Ut omnia maneria ſua, & omnes terræ ſuæ, & omnes homines ſui, & omnia maneria, & omnes terræ, & omnes fœdi Eccleſiæ Coventr. & Litchfield, de Ceſtr. & Salop, & de Gnoweſal, & omnium Eccleſiarum ſuarum libera eſſent in perpetuum, & quieta de Foreſta, & de placitis Foreſtæ, de vaſtis, & aſſartis regardis Foreſtæ, per quandam aliam cartam quam profert in hæc verba. Ricardus Dei Gra. Rex Angliæ, &c. Archiepis', &c. Sciatis nos conceſſiſſe, & præſenti Carta noſtra confirmaſſe dilecto, & familiari noſtro Hug. Coventr. Epiſcopo, & ſucc. ſuis Epiſc. Coventr. ut omnia maneria ſua, & omnes terræ ſuæ, & omnes homines ſui, & omnia maneria, & omnes terræ, & omnes fœdi Eccleſiæ de Coventr. & Litchfield, & de Ceſtr. & de Salop, & de Gnoweſal, & omnium Eccleſiarum ſuarum in perpetuum libera ſint, & quieta de murdro, & latrocinio, & Shir. & hundr. & de ſectis Shir. & hundr. & auxiliis vic' de Foreſta, & placitis Foreſtæ de vaſtis & aſſartis rewardis Foreſtæ, & omn' aliis operibus tã Caſtellorũ quam vivariorũ & ſtagnorũ, & omn' placitis, & omnibus querelis. Quare volumus, & firmiter præcipimus ut omnia maneria, & omnes terræ, & omnes fœdi præd. Epiſc. & ſucceſſorum ejus, ac præd. Eccleſiarum inde in perpetuum libera ſint, & quieta. Teſtibus, &c. Dat. per manum Willi. Elienſis Electi

&ti Cancellarii, Anno Regni n. primo apud Cantuar. xxx. die Novembr. unde dic' quod ipſe & prædec. ſui à tempore præd. Hug. & poſt confectionem præd. cartarum tenuer. præd. boſcos quietos de Foreſta, Foreſtar. viridar. & aliis miniſtris Foreſtæ Domini Regis, uſque ad ultimum iter præd. Idem etiam Epiſcopus queſitus ſiquid clamet in venatione præd. boſcorum dicit, quod omnes prædec. ſui, & ipſe ſimiliter poſt confectionem præd. Cartarum, venari ſolebant in præd. boſcis, & capere & fugare pro voluntate ſua feras in eiſdem boſcis de Foreſta Domini Regis venient. uſque ad prox. iter præd. & petit, quod Dominus Rex velit permittere ipſum ad Eccleſias ſuas, uti & gaudere ſtatu, & libertatibus quibus hactenus ipſe & prædec. ſui, ut de jure Eccleſiarum ſuarum uſi ſunt, & per præd. conceſſiones præd. Regis Ricardi antec. ſui, &c. Et præd. Juſtic' dicunt quod Dominus H. R. Pater Domini Regis nunc, poſt confectionem præd. Cartarum Domini Regis Ricardi fuit in ſeiſina præd. maneriorum & boſcorum; Et ſuper hoc ſcrutatis rotulis & brevibus de Scac' de tempore præd. H. Regis inveniunt brevia ſubſcripta, &c. H. Dei Gratia Rex Angl. Dominus, Hib. & Dux Norman, &c. Aquit. Comes Audegaviæ Vic. Staff. ſalutem. Scias, quod reddimus venerabili patr. à Coventr. & Litchfield Epiſc. maneria Cannock & Ruggelegh, quæ Rex Ricard. Avunculus noſt. dedit bonæ memoriæ Hug. de Novant quondam Coventr. Epiſc. & ideo tibi præcipimus, quod de præd. maneriis ipſi Epiſc. plenam ſeiſinam hereſa. Teſte me ipſo apud Waltham, xvii. die Aprilis, Anno Regni, no. quartodecimo. H. Dei Gratia, Rex Ang. Dominus, Hib. & dux Norman, &c. Aquit' & Comes Audegaviæ Baronibus ſuis de ſcaccar' ſalut Computate Vic' n. Staff. in firma Com. ſui triginta ſolidos, & ſex denar. Blanc' de mediet' Anni Regni, xiv. pro manerio de Cannock, & de Ruggelegh, quæ reddimus venerabili patri Coventr. & Litchfield Epiſc. computate etiam eidem Vic' ſexag. & unum ſolid' blanc' de Regn. n. xv. pro eiſ-

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dem maneriis, & ſic de anno de cætero, &c. T. me ipſo apud Waltham xvij. die Aprilis, anno Regni n. quartodecimo: Et quia præd. carta per quam præd. Rex Ricardus dedit præd. maneria de Ruggelegh, & Cannock præd. Hug. Epiſc. & ſucceſſoribus ſuis poſterioris datæ eſt, quam ſit carta ejuſdem Regis, per quam ipſe Epiſcopus clamat ipſa, & omnia maneria ſua, terras & homines ſuos eſſe quietos de Foreſta, prout per datas earundem patet; Nec idem Epiſcopus alia maneria ſua ſeu terras clamare poteſt eſſe quieta de Foreſta quam illa quæ tempore confectionis illius Cartæ fuerunt in ſeiſina præd. Hug. Epiſcopus datus eſt dies præd. Epiſc. de audiend' judicio ſuo à die Paſche in unam menſem ad Parlamentum, &c. Et idem Epiſcopus polo ſuo Gilbertum de Kirkby, vel Robertum de Pipe, & præceptum eſt per Dominum Regem, quod Regin. de Grei, Bogo de Knovil, & Ricardus de Holebrok, interim inquirant per quas metas & diviſus prædicti boſci prædict. maneriorum dividuntur ab aliis boſcis qui ſunt Baronia ipſius Epiſc. & ſimiliter à Foreſta Domini Regis diſtinct' & apert', & certificent Dominum Regem ad eandem terminum, &c. Et Dominus Rex præcipit quod boſci præd. interim remaneant in eodem ſtatu quo nunc ſunt, &c. Poſtea ad Parlamentum ipſius Domini Regis apud Weſtmon. poſt Paſcha, Anno Regni Regis nunc decimo octavo, venit præd. Epiſcopus in propria perſona ſua, & reddidit ipſi Domino Regi præd. boſcos, ut jus Domini Regis, & idem Dominus Rex de gratia ſua ſpeciali conceſſit & dedit eoſdem boſcos præd. Epiſc. per eaſdem metas bundas & diviſus, per quas ipſe Epiſcopus & prædec' ſui à tempore confectionis præd. Cartæ præd. Domini Regis Ricardi boſcos illos tenuerit, habend. & tenend. eidem Epiſc. & ſucceſ. ſuis, & Eccleſiæ ſuæ, ſci' Cedde de Litchfield, in liberam, puram, & perpetuam elimoſinam, ut liberam Chaceam in perpetuum. Ita quod bene licet ipſi Epiſc. & ſucceſ. ſuis

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boſcos illos includere, & incluſos tenere, & parcos inde facere pro voluntate ſua abſque hoc quod ſaltatoria faciant in iiſdem, ſeu rechia habeant ad venationem ipſius Domini Regis de Foreſta ſui capiend. & ita quod boſci illi omnino quieti ſint de Foreſta, & de placitis Foreſtæ, & quod nec Juſtic' ipſius Domini Regis ſeu Sen. de Foreſta qui pro tempore fuerint Foreſtarii, viridarii, agiſtatores, regardatores ſeu alii miniſtri quicunque fuerint in boſcis præd. per metas, bundas, & diviſus ſupradictas ſe aliqualiter intromittant ſeu officium ſuum exerceant quoquo modo, licèt præd. boſci ſub ſuis metis, bundis, & diviſis præd. fuerint infra antiquas metas Foreſtæ ipſius Domini Regis de Cannock: Et pro hac, &c. idem Epiſcopus cognovit ſe teneri Domino Regi in mille libris ſterlingorum. Vid. Plac. Parl. fol. 1. Co. 4. Inſt. 301.

FINIS.